SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 404

UNITED STATES, APPELLANT,

vs.

PABST BREWING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Docket 59-C-215

UNITED STATES OF AMERICA, Plaintiff,

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants

Viol. Sec. 7 of Clayton Act To require Pabst to divest itself of business and assets. Action arose at: of Blatz.

DOCKET ENTRIES

[fol. 3]

Date	Proceedings
10/ 1/59	Complaint filed; Summons issued. Pltf's motion and order that summons be issued and service made by the Marshal.
10 /6/59	Summons ret'd. Served Deft. Val Corp. on 10/5/59.
10/ 9/59	Summons ret'd. Served Deft. Schenley Industries, Inc. on 10/6/59 by Dep. U. S. Marshal, New York City.
10/13/59	Summons ret'd. Served Deft. Pabst Brewing Co. on 10/7/59.
10/19/59	Order extending time for defts. to answer extended to 12/14/59.
11/13/59	Pltf's Request for Deft. Pabst Brewing Co. answer certain Interrogatories with Notice of Filing with Clerk; Proof of Service; and Affidavit of Mailing Request to Ray T. McCann, atty for Pabst Brewing Co. and Robert S. Marx, Cincinnati, Ohio, atty. for Schenley Industries, Inc. and the Val Corp.
11/16/59	Order extending time for Deft. Pabst Brewing Co. to object to Interrogatories extended to 12/22/59; time which deft. may answer interrogatories extended to 1/6/60.

Date	Proceedings
12/ 1/59	Appearance of Ralph M. Hoyt, atty. for Defts. Schenley Industries, Inc. and The Val Corp.
12/10/59	Affidavit of Gunter Bethke in support of Defts' motions for Summary Judgment of Dismissal as to Defts. Schenley Industries Inc. and The Val Corp. with Motion and Notice of Motion. Exhibits A, B. and C attached.
12/14/59	Motion of deft. Pabst to strike Paragraph 17 of complaint, or alternatively for more definite statement, with aff. of mailing, and supporting brief.
"	Brief in support of motions for summary judgment of dismissal as to defts., Schenley Industries, Inc. and The Val Corp.
12/18/59	Agreed order extending time to answer or object to interrogatories, and time to file brief in opposition to deft's motion to strike or for more definite statement.
1/13/60	Pltf's motion for production and inspection of documents under Rule 34, together with supporting affidavit of Earl A. Jinkinson and notice and affidavit of service.
1/21/60	Memorandum in support of Objections to Interrogatories served on deft. Pabst Brewing Co.
"	Objections of Deft. Pabst Brewing Company, to Interrogatories served on Deft. Pabst Brewing Company on 11/13/59 and Affidavit of Mailing.
1/27/60	Pltf's More Definite Statement Voluntarily Submitted under Rule 12(e) with respect to paragraph 17 of the complaint.
"	Pltf's Memorandum in Opposition to Motion of Deft. Pabst Brewing Company to Strike Par. 17 from the Complaint or in the Alternative for a More Definite statement of Claim.
1/29/60	Deft. Pabst granted up to 2/15/60 to file its brief; Pltf. granted up to 3/7/60 to file.

Date	Proceedings
2/ 1/60	Brief of the United States in Opposition to the motions of the defendants Schenley Industries, Inc. and The Val Corporation for Summary Judgment of Dismissal as to them; Affidavit of Earl Jinkinson in opposition to Motions for Summary Judgment of Dismissal at the defts. Schenley Industries, Inc. and The Val Corp.; Notice and Affidavit of Mailing covering the above documents.
2/15/60	Agreed order: 1. withdrawing motions of Pabst to strike Paragraph 17 from complaint or make more definite and certain; 2. Extending time of Pabst to answer to 4/15/60; Withdrawing pltf's motion for producting of documents, without prejudice; and providing that Pabst shall furnish names and address of beer distributors, etc.

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2/15/60	Hearing (Ret) on defts' motion for summary judgment.
2/23/60	Transcript of Proceedings upon Hearing on Defts' (Schenley Industries, Inc.) and The Val Corporation) Motion for Summary Judgment of Dismissal. (2/15/60)
2/26/60	Order that time which deft. Pabst Brewing Co. may answer interrogatories served by pltf. extended to 3/7/60 with consent of pltf.
3/ 7/60	Motion of deft., Pabst Brewing Co., for protective order with respect to answers to interrogatories served on it by pltf. Nov. 13, 1959, with supporting affidavit by Joseph R. Gray.
"	Notice of deft's motion for protective order, etc.
"	Deft's answers to interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 12(b), 13, 17, 20, 21, 22, 23, 24, 25 and 30 filed, and given confidential treatment by order of the court.
3/ 7/60	Agreed order that pltf. have until 3/22/60 to file brief in opposition to objections of deft, Pabst, to certain interrogatories served on 11/13/59.

Date	Proceedings
3/ 9/60	Order that Deft. Pabst Brewing Company's Answers to pltf's interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 12(b), 13 as it applies to 12(b) 17, 20, 21, 22, 23, 24, 25 and 30 filed with this court on 3/7/60 shall be accorded confidential treatment; answers to be filed with the court in a sealed envelope to be placed in custody of the clerk, etc.
3/16/60	Deft. Pabst Brewing Company's Notice that on 3/16/60 the names and addresses of beer distributors or wholesalers within the continental United States who handled either Pabst-brewed beer or Blatz-brewed beer in the month of July 1958 and since 8/1/58 to 12/31/58, have ceased handling Pabst-brewed beer, will be filed.
3/21/60	Order that Interrogatories numbered 11, 12(a), 15, 16, 18, 27 and 29 served by pltf. on the Deft. Pabst Brewing Company on 11/13/59 are withdrawn without prejudice; that interrogatories numbered 10, 12(c), 14, 19, 26 and 28 are hereby amended and modified; further that Deft. Pabst Brewing Company is granted leave to 4/22/60 to answer interrogatories 12(c), 14, 19 and 28 as modified by this order and is granted up to 5/22/60 to answer Interrogatories 10 and 26 as modified by this order.
4/ 7/60	Memorandum decision, and order denying motions of defts, Schenley Industries, Inc. and The Val Corporation for summary judgments of dismissal.
4/12/60	Order extending time for defts. Schenley Industries, Inc. and The Val Corp. to answer extended to 5/9/60 with consent thereof.
4/15/60	Answer of Defendant, Pabst Brewing Company, filed.
4/22/60	Deft. Pabst Brewing Company's Notice of Filing Answer to Pltf's Interrogatories with Affidavit of Mailing.

Date	Proceedings
4/22/60	Answers of Deft. Pabst Brewing Company to Interrogatories 12(c), 13 as it applies to 12(c), 14, 19 and 28 Served on said deft. 11/13/60 as amended and modified by agreed order entered 3/21/60.
"	Agreed order that deft., Pabst's answers to interrogatories 12(c), 13 as it applies to 12(c), 14, 19 and 28 shall be accorded confidential treatment.
4/28/60	Deft., Pabst's, notice of filing amendment of answer to Interrogatory 12(c) as amended. Said answer to be accorded confidential treatment.

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5/ 4/60	Pltf's motion for a preliminary injunction, with supporting affidavit of Earl A. Jinkinson. Notice of motion filed.
"	Pltf's motion to strike certain matter from the answer of the deft., Pabst Brewing Co.
5/ 5/60	Answer of Defts. Schenley Industries, Inc. and The Val Corp. filed, with Defts' Proof of Service by Mail to attys. for pltf. and Atty. for Deft. Pabst Brewing Company.
5/ 9/60	Hearing (Ret) on pltf's motion for prelim. inj. and motion to strike.
5/13/60	Order fixing times for filing briefs, affidavits and counter-affidavits with respect to Pltf's motion for a temporary injunction.
5/17/60	Pltf's motion to strike certain matter from the answer of defts., Schenley Industries, Inc. and The Val Corporation, with Notice of Motions.
5/23/60	Hearing (Ret) on pltf's motion to strike portions of answers.
5/23/60	Agreed order fixing time for deft., Pabst, to answer interrogatories 10 and 26, as amended and modified by agreed order of 3/21/60, and directing that said answers be accorded confidential treatment.
5/31/60	Agreed order extending time for filing briefs.

Date	Proceedings
6/ 8/60	Pltf's Brief in support of Motion to Strike Certain Matter from the Answer of Defts. Schenley Industries, Inc. and The Val Corporation with Notice of Filing Brief in Clerk of Court Office.
6/ 8/60	Deft. Pabst Brewing Company's Notice of filing the following listed below with pltf's Proof of Service.
"	Answer of Pabst Brewing Co. to pltf's Motion for preliminary injunction.
"	Memorandum in support of deft. Pabst Brewing Company's first defense in its answer to pltf's motion for preliminary injunction.
"	Affidavit of Rocco B. Bunino in opposition to pltf's motion for preliminary injunction.
"	Affidavit of Joseph R. Gray in opposition to pltf's motion for preliminary injunction.
"	Affidavit of William W. Heusner in opposition to pltf's motion for preliminary injunction.
"	Affidavit of Glenn W. McGee in opposition to pltf's motion for preliminary injunction.
"	Memorandum in opposition to pltf's motion to strike in part Par. 19 of Deft. Pabst Brewing Company's Answer.
6 /7/60	Deft., Schenley's, motion to deny pltf's motion for preliminary injunction against Schenley, with supporting memorandum and appendix containing affidavits (copies), which have been filed earlier in the case.
"	Agreed order that portions of pltf's motion for preliminary injunction filed on 5/9/60 requesting injunctive relief against Pabst with respect to the former Blatz Brewery in Milwaukee are withdrawn with prejudice. Deft., Pabst will not sell or dispose of former Blatz equipment or facilities located thereon on 6/7/60 which were there on 7/29/58 until further order; provided that readily replaceable miscellaneous minor pieces of equipment are not affected by this order.

Date	Proceedings
6/22/60	Answers of Deft. Pabst Brewing Co. to Interrogatories 10 and 26 served on Deft. 11/13/59 as amended and modified by Agreed Order entered 3/21/60 (These Answers are Confidential)
"	Notice of Filing. Answers to Interrogatories.
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6/27/60	Interrogatories of Deft. Pabst Brewing Co. addressed to pltf. with Notice of Filing Interrogatories and Affidavit of Mailing.
6/28/60	Pltf's reply briefs supporting motion to strike certain matter from answer of deft., Pabst Brewing Co.
7/ 6/60	Brief of Defts, Schenley and Val, in opposition to Pltf's Motion to Strike Certain Matters from their Answer.
"	Agreed order extending time to pltf. to file briefs to 7/25/60.
7/ 8/60	Notice and Proof of Service of Agreed Order of 7/6/60.
"	Agreed order extending time of pltf to file answers or objections to interrogatories served by Pabst on 6/24/60 to 10/15/60; oral hearing on pltf's motion for prelim. inj. to be held following filing of pltf's answers to said interrogatories numbered 9 to 15 and 58 to 67, except where pltf's objections thereto are sustained by the court.
8/ 4/60	Pabst's Memorandum in reply to Pltf's brief in opposition to deft, Pabst's, first defense to pltf's motion for preliminary injunction.
9/ 7/60	Transcript of Proceedings upon Hearing on (1) Pltf's Motion for Preliminary Injunction; (2) Pltf's Motion to Strike Certain Matter from the Answer to Deft. Pabst Brewing Company.
10/13/60	Order granting pltf. until 11/15/60 within which time to file its answer or objections with respect to each of the interrogatories served on it 6/24/60 by deft. Pabst Brewing Co.

Date	Proceedings
11/14/60	Answers to Certain Interrogatories served on Pltf. by Deft. Pabst Brewing Co. 6/24/60.
"	Objections of Pltf. to Interrogatories served on it 6/24/60 by Deft. Pabst Brewing Co.
"	Notice and Affidavit of Mailing covering above Answers and Objections of Pltf.
11/18/60	Brief in Support of Pltf's Objections to Certain Interrogatories served on it 6/24/60 by Deft. Pabst Brewing Company; Affidavit of Mailing covering the above brief.
11/28/60	Agreed order extending time for filing briefs.
12/ 5/60	Order that the time within which pltf. may file its Reply Brief to the brief to be filed by the Deft. Pabst is extended to 1/23/61.
12/16/60	Motion of Deft. Pabst Brewing Company to Compel Plaintiff to Completely Answer Interrogatories 7, 10 and 14 served on Plaintiff by said Defendant on 6/24/60.
"	Brief in Answer to Pltf's Objections to Certain Pabst Interrogatories served on Plaintiff 6/24/60 and in support of the Pabst Motion to Compel Plaintiff to completely answer other interrogatories.
1/23/61	Pltf's Notice of filing with Clerk of Court pltf's Reply brief with Respect to Its Objections to Certain Interrogatories served on it 6/24/60 by Deft. Pabst Brewing Co. and in Opposition to Pabst's Motion to Compel Ptf. to answer completely other interrogatories.
"	Pltf's Reply Brief with Respect to its Objections to Certain Interrogatories served on it 6/24/60 by Deft. Pabst and in Opposition to Pabst's Motion to compel pltf. to answer completely other Interrogatories.

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1/30/61	Consent and order substituting Leonard J. Emmerglick as atty. for Schenley Industries, Inc. and The Val Corporation, in place of Roy G. Holmes and Robert S. Marx. Atty. Ralph Hoyt continues as local counsel for them.

Date	Proceedings
7/18/60	Plaintiff's Reply Brief in support of motion to strike certain matters from the answer of defendants, Schenley Industries, Inc. and The Val Corporation.
7/25/60	Brief in opposition to defendant Pabst Brewing Company's First Defense in its answer to plaintiff's motion for preliminary injunction.
3/ 8/61	Agreed order setting down oral arguments on the following motions: 1. Motion of Pltf. to strike certain matter from the answer of Defts. Pabst Brewing Company, Schenley Industries, Inc. and The Val Corp. 2. Objections of Pltf. to Interrogatories of Deft. Pabst Brewing Company. 3. Motion of Deft. Pabst Brewing Co. to compel pltf. to completely answer Interrogatories 7, 10 and 14.
3/28/61	Notice of substitution of Leonard J. Emmerglick as one of the attys for Schenley and Val, in place of Robert S. Marx and Roy G. Holmes, and for termination of appearance of firm of Nichols, Wood, Marx & Ginter as counsel for said defts.
3/28/61	Hearing on pltf's Motion to strike certain matters from Answer of defts, etc.
3/31/61	Order denying motion of Pltf. to strike certain matter from the Answer of Deft. Pabst Brewing Co.
"	Order Denying Motion of pltf. to strike certain matters from the Answer of Defts. Schenley Industries, Inc. and The Val Corporation.
5/ 1/61	Transcript of proceedings upon hearing of (1) Pltf's motion to strike certain matters from answer of defts; (2) Pltf's objections to interrogatories of deft., Pabst; and (3) Motion of deft., Pabst, to compel pltf to answer interrogatories 7, 10 and 14. Hearing held on 3/28/61.
5/15/61	Pre-trial conference.
6/21/61	Transcript of pre-trial conference held 5/15/61.
7/ 7/61	Order following 5/15/61 pre-trial conference. Second pre-trial conf. set for 10/9/61 at 2:00 p.m.

Date	Proceedings
9/18/61	Pltf's response to pre-trial order of 7/7/61, listing witnesses to be called, etc.
9/29/61	Deposition of Harris Perlstein taken by pltf. at Chicago, Ill. on 8/7/61.
"	Deposition of Rocco B. Bunino taken by pltf. at Chicago, Ill. on 8/8/61. No. I.
"	Deposition of Rocco B. Bunino taken by pltf. at Chicago, Ill. on 8/9/61. No. II.
10/16/61	Agreed order adjourning second pre-trial conf. from 10/23/61 to 11/20/61.
11/20/61	Pre-trial conf. held. (Ret) Pre-trial order issued.
11/22/61	Order following 11/20/61 pre-trial conf. Further pre-trial conf. scheduled for 1/15/62 at 2:00 p.m.
1/11/62	Pltf's further response to pre-trial order (Paragraph 1D) dated 11/22/61.
1/15/62	Pre-trial conf. held. Order entered.
1/18/62	Order following 1/15/62 pre-trial conf. (Ret)
1/19/62	Revised page 11 of Pltf's Further Response to pre-trial order filed.
1/29/62	Deft., Pabst Brewing Co., motion for an order authorizing Clerk to issue subpoenas duces tecum to each of witnesses names in Pltf's response to pre-trial order filed 9/15/61 and pltf's further response filed 1/10/62.
4/ 4/62	Agreed order that clerk shall issue subpoenas for service in any judicial district of the U. S. to witnesses named in Pltf's response etc. to pre-t. order.
5/21/62	Deft. Pabst's motion for entry of a protective order and for clarification of court's order of 4/4/62, to be heard 5/22/62.

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5/22/62	Hearing on motion of Pabst for protective order and clarification of 4/4/62 order. Order issued by court, to be drafted by Atty. McGee.
5/22/62	Tabulated information on production and sales figures filed by Berlin Brewing Co.
5/24/62	Affidavit of Henry Dhein, Jr., V-Pres. of West Bend Lithia Co., on production and sales figures.

Date	Proceedings
5/28/62	Affidavit of Frederick J. Effinger, Asst. Sec'y and Treas. of Effinger Brewing Co., Baraboo, Wis. on production and sales figures. (Mailed to Atty. David A. Nelson).
5/29/62	Ltr. dated 5/28/62 from Atty. Nelson suggesting following entry:
	5/26/62 Responses to subpoenas returnable this date returned by Clarence Rothe, Rahr Green Bay Brewing Co.; Richard F. Haidlinger, Peoples Brewing Co.; Roland J. Marx, George Walter Brewing Co.; Harry Eikenberry, Froedtert Malt Corp.; Herbert Kurth, Kurth Malting Co.; Herbert Ladish, Ladish Malting Co.; Clarence Alt, Rahr Malting Co.; C. Robert Morris, Zinn Malting Co.; Stanley Williams, Wisconsin Malting Co. Return date extended to 6/8/62 on subpoenas returnable this date served upon Lorenz Kuenzl, Oshkosh Brewing Co.; Edmund C. Bloedorn, Fox Head Brewing Co.; David Struther, Joseph Schlitz Brewing Co.
5/29/62	Stipulated "protective order" providing that documents produced in response to subpoenas shall be returned to the party producing them after the attorneys for the parties have had an opportunity to inspect and copy them. Copies to be admissible as to authenticity, but may be objected to on grounds of relevancy, and may be contradicted as to truth of the contents, or accuracy. All copies shall be treated as confidential until further order of the court, and may be disclosed only to the attorneys or employees of the parties as may be actively engaged in the preparation of this case for use only in the preparation of this case, and not otherwise. Addn'l provisions that U. S. may have addn'l time to subpoena other evidence if not satisfied with the responses already made.

Date	Proceedings
5/31/62	Response of G. Heileman Brewing Co. to subpoena, Affidavit of Roy E. Kumm, Pres., and motion to quash the subpoena as to information not furnished in the response filed. (Exhibit B–1 containing figures on production, etc. removed from affidavit and mailed to Atty. David A. Nelson).
6/ 4/62	Affidavit of Edmund B. Koller, pres. of The Walter Brewing Co., Pueblo, Colorado, giving figures on productions and sales in response to subpoena.
"	Ltr. dated 6/2/62 from Carl H. Arens, Chicago, Ill., stating that he had no records, and his understanding that he would not have to appear in response to subpoena on 6/8/62.
6/ 7/62	Affidavit of George J. Holas, Pres. of the Pilsen Brewing Co., Chicago, Ill. giving figures on production, sales, etc. in response to subpoena.
"	Affidavit of Geno Castagnoli d/b/a Solano Distributing Co., Vallejo, Calif. giving figures on purchases of Pabst and Blatz beer, and gross profit figures on beer sales.
6/12/62	Ltr. dated 6/11/62 from Atty. Nelson suggesting following entry:
	6/ 8/62 Responses to subpoenas returnable this date returned by Edmund C. Bloedorn, Fox Head Brewing Co.; Milton Hutchins; J. F. Fesenmeier, Fesenmeier Brewing Co.; Thomas J. Fatato, Eastern Brewing Co.; Harold B. Bloomquist, Rhinelander Brewing Co.; Phillip Castagna. Return date extended to 6/22/62 on subpoenas returnable this date served upon, David Struther, Schlitz Brewing Co.; Jones, Atlantic Brewing Co.; Fred W. Huber, Huber Brewing Co.; George W. Betz, Betz Distributing Co.
6/18/62	Motion of Richard G. Jones, V-Pres. and Gen'l Mgr. of Jackson Brewing Co., New Orleans, La. to quash subpoena duces tecum.

Date	Proceedings
6/20/62	Affidavit of Phillip F. Neuweiler, Pres. of Neuweiler Brewing Corp., Allentown, Pa. giving figures on production, sales, etc. in response to subpoena. (Mailed to Atty. David A. Nelson).
[fol. 9]	
6/21/62	Affidavit of J. M. Delmar, Exec. V-Pres. and Gen. Mgr. of Gulf Brewing Co., Houston, Texas, containing information in response to subpoena. (Forwarded to Atty. David A. Nelson).
"	Affidavit of Frederick Sitterding, 3rd, Pres. of Home Brewing Co., Inc., Richmond, Va., containing information in response to subpoena. (Forwarded to Atty. Nelson).
6/22/62	Affidavit of Joseph V. Burns., Pres., Eagle Brewing Co., Catasauqua, Pennsylvania, containing information in response to subpoena. (Given to Atty. Nelson).
"	Affidavit of Herbert Epstein, Pres., Pfeiffer Brewing Co., Detroit, Mich., containing information in response to subpoena. (Given to Atty. Nelson).
6/25/62	Affidavit of Joseph T. Ortlieb, Pres., Henry E. Ortlieb Brewing Co., Philadelphia, Penn. containing information in response to subpoena. (Mailed to Atty. Nelson.)
"	Affidavit of Paul A. White, Gen. Mgr., The Pilsener Brewing Co., Cleveland, Ohio containing information in response to subpoena. (Mailed to Atty. Nelson.)
6/27/62	Motion of August Wagner Breweries, Columbus, Ohio, by James Amento, Pres., to quash subpoena duces tecum.
7/ 2/62	Response of Peerless Transportation Co., Dayton, Ohio, distributor for Pabst in Ohio, to subpoena dated 6/7/62. (Mailed to Atty. Nelson.)
"	Affidavit of James H. Hall, owner of Hall Distributing Co., Salisbury, N.C. in response to subpoena. Employee of Blatz and Pabst in connection with sales and distribution. (Mailed to Atty. Nelson.)

Date	Proceedings
7/ 3/62	Ltr. dated 7/2/62 from Atty. David A. Nelson suggesting the following entry: June 22: response to subpoena returnable this date returned by J. Miner Culp, Oertel Brewing Co. Return date extended to 7/13/62 on subpoenas returnable this date served upon: George W. Betz, Betz Distribution Co.; Tyrus R. Jones, Atlantic Brewing Co.; David Struther, Schlitz Brewing Co.; R. Leiter Fitzsimons, American Brewery, Inc.; Bruce Berckmans, International Breweries, Inc.; Jack Sobel, Beverage Distribution Co. of Maryland; Charles S. Withrow; John G. Hoyer, Frank Fehr Brewing Co.; Robert A. Schiffer, Goebel Brewing Co. Return date extended to 7/27/62 on subpoena returnable this date served upon B. P. Bahonnon, Standard Brewing Co.
7/ 9/62	Ltr. dated 7/5/62 from Fred Koch Brewery, Dunkirk, N.Y., Jas. M. Mead, Jr., Treasurer, advising that because of summer vacations, they requested a 60 day delay in responding to subpoena. (Copy sent to Atty. Nelson.)
7/10/62	Motion of John G. Hoyer, acting V-Pres. and managing officer of Frank Fehr Brewing Co., Louisville, Ky., to quash subpoena duces tecum, with supporting affidavit of John G. Hoyer.
7/11/62	Affidavit of William T. Middleton, 312 Broadway, Sterling, Illinois, in response to subpoena.
"	Affidavit of James E. Sapp, Jr., V-Pres. and Gen. Counsel of Standard Brands Incorporated, 625 Madison Ave., New York 22, N.Y., in response to subpoena.
"	Affidavit of Dewey Johnson, owner and operator of Lancaster Bottling Works, 305 Union St., Lancaster, Ohio, in response to subpoena.
"	Affidavit of Luttie Talmage Harris, sole proprietor, d/b/a Harris Distributing Co., Durham, N.C. in response to subpoena. Due to affiant's illness, the business was discontinued on 4/30/62. (All 4 affidavits filed on 7/11/62 forwarded to Atty. Nelson.)

Date	Proceedings
7/13/62	Affidavit of George William Betz, Beloit, Wis. in response to subpoena. (Delivered to Atty. Nelson.)
"	Material furnished by Diamante Distributing Co., Lansing, Michigan, by Anthony Diamante, in response to subpoena.
"	Affidavit of R. Leiter FitzSimons, Pres. of American Brewery, Inc., 1770 N. Gay St., Baltimore, Maryland, in response to subpoena. (Delivered to Atty. Nelson.)
[fol. 10]	
7/17/62	Ltr. dated 7/16/62 from Atty. David A. Nelson suggesting the following entry: July 13: Responses to subpoenas returnable this date returned by Thomas Evans, Evans Beverage Co.; John A. Baynes, Jr.; Edwin Wunderlin, A. W. Walsh Co.; Richard B. Hoeksema, Meyer Distributing Co.; F. E. Raraty, Albert Schwill & Co.; Tyrus R. Jones, Atlantic Brewing Co.; Jack Soebel, Beverage Distributing Co.; Robert A. Schiffer, Goebel Brewing Co.; Charles Lee, Alpena Beer Distributing Co.; Marcus Hoffard; Fred E. Moseley; Charles S. Withrow. Return date extended to July 27, 1962 on subpoenas returnable this date served upon: Edward Fitzgerald, Fitzgerald Bros. Brewing Co.; William Seeley, Fitzgerald Bros. Brewing Co.; Don L. Gamache; Everett Bartoletti; David Struther, Joseph Schlitz Brewing Co.; Bruce Berckmans, International Breweries, Inc.; Fred W. Huber, Huber Brewing Co. Return date extended to August 24, 1962 on subpoena returnable this date served upon James M. Mead, Fred Koch Brewery, Inc.
7/25/62	Affidavit of William E. Fitzgerald, Jr., Pres. of Fitzgerald Bros. Brewing Co., Troy, N.Y. in compliance with subpoena. (forwarded to Atty. Nelson.)

Date	Proceedings
7/27/62	Four typewritten sheets of figures furnished by Alvin E. Heutchy, Sec'y and Gen'l Atty. of F. & M. Schaefer Brewing Co., purchaser on 6/20/61 of Standard Brewing Co., of Cleveland, Ohio, in response to subpoena. (Transmitted to Atty. Nelson.)
"	Two boxes of records rec'd from Bouma & Gamache, 504 Water St., Manistee, Mich. At direction of Atty. Nelson, to be shipped collect by Railway Express to him.
7/30/62	Affidavit of William Seeley that he is no longer employed by Fitzgerald Bros. Brewing Co., Troy, N.Y., and that he does not have any of their records.
"	Affidavit of Herbert M. Phillips, Atty-in-fact for Cleveland-Sandusky Brewing Corp., Cleveland, Ohio, in response to subpoena. (Mailed to Atty. Nelson.)
"	Affidavit of Frank J. Becht, Treas. of International Breweries, Inc., Detroit, Mich., in response to subpoena. (Mailer to Atty. Nelson.)
"	Motion of International Breweries, Inc. to modify subpoena or to require advancement of costs of complying therewith, with supporting affidavit of Frank J. Becht, Treas. of International Breweries, Inc.
"	Affidavit of Everett Bartoletti, d/b/a Bartoletti Beverage Co., in response to subpoena. (Mailed to Atty. Nelson.)
8/ 3/62	Ltr. dated 8/2/62 from Atty. David A. Nelson suggesting the following entry: July 27: Responses to subpoena returnable this date returned by David Struther, Joseph Schlitz Brewing Company and Fred W. Huber, Huber Brewing Co.
8/27/62	Three typewritten sheets of figures furnished by Jas. M. Mead, Jr., Treasurer Fred Koch Brewery in response to subpoena. (transmitted to Atty. Nelson.)

Date	Proceedings
9/ 5/62	Ltr. dated 9/4/62 from Atty. Nelson advising of receipt of "corrective affidavit of Harry Eikenberry," V-Pres. of Froedtert Malt Corp.
9/ 7/62	Ltr. dated 9/6/62 from Atty. Nelson acknowledging receipt of seven boxes of documents from Don L. Gamache of Manistee, Michigan.
10/12/62	Pre-trial conf. (Ret) Pre-trial order entered, to be prepared by counsel.
10/26/62	Order following 10/12/62 pre-trial conf. Further pre-trial conf. set for 2/25/63 at 2:00 p.m.
2/19/63	Deft., Pabst Brewing Co's, response to order following pre-trial conf. of 10/12/62 together with Appendix I, II, III.
2/25/63	Pre-trial conf. (Ret) Protective order signed. Parties to prepare pre-trial order.
"	Protective order, on motion of deft., Pabst Brewing Co., for confidential treatment of Pabst Brewing Co's response to order following pre-trial conf. of 10/12/62, including appendices thereto. (Material to be held confidential was filed on 2/19/63.) (Held in clerk's safe.)
3/13/63	Order following pre-trial Conference of 2/25/63. Final pre-trial to be held 5/6/63.
[fol. 11]	
4/15/63	Ltr. dated 4/12/63 from U. S. Atty. stating issues involved in the case, pursuant to 3/13/63 order.
4/29/63	Ltr. dated 4/27/63 from deft., Pabst, stating issues involved in the case.
5/ 6/63	Pre-trial conference. (Ret) Order entered.
5/ 7/63	Order following 5/6/63 pre-trial conference. Trial set for 10/14/63. Estimated that trial will last for 2 months.
8/20/63	Ltr. dated 8/19/63 from govt. amending items referred to on page 30 of "Pltf's Further Response to Pre-trial Order filed on 1/10/62, by adding certain material.
9/11/63	Pre-trial conf. with the court. (Ret) Trial rescheduled for 1/6/64. Briefs due 12/23/63.
9/12/63	Order following 9/11/63 conference. Trial rescheduled for 1/6/64. Para. 2 of 5/7/63 amended, re filing of briefs.

Date	Proceedings
12/16/63	Conference with the Court (Ret). Trial date adjourned to 1/27/64 at request of parties. Dates of pre-trial order extended three weeks.
1/ 3/64	Conference with the Court. (Ret) Parties present motions for issuance of subpoenas for witnesses outside of district. No objections. Orders signed.
"	Govt's motion, and order permitting pltf. to issue subpoenas to witnesses residing more than 100 miles from Eastern Dist. of Wis.
1/ 4/64	Motion of Pabst, and order permitting Pabst to issue subpoenas to witnesses residing more than 100 miles from the Eastern District of Wisconsin.
1/13/64	Pre-trial conf. (Ret) Trial on liability only to be commenced 1/27/64. On Wed. of each week, parties to be furnished list of witnesses to be called the following week, in the order they will appear. Exchange of charts to be made 10 days before being offered. Parties to prepare order.
"	Trial brief of deft., Pabst Brewing Co.
"	" " " pltf., United States of America.
1/20/64	Agreed order listing documents, and the admissibility thereof, etc.
1/23/64	Dft., Pabst Brewing Co's, reply to govt's pretrial brief.
1/24/64	Govt's reply brief on the "Failing Enterprise" doctrine.
1/23/64	Affidavit of Geno Castagnoli of Vallejo, Calif. dated 1/21/64.
1/27/64	Motion of Wisconsin-Zinn Malting Corp. for a protective order on sales and production figures of Wisconsin Malting Co. (a predecessor), with affidavit of Stanley Williams, aff. of mailing and notice of motion.
"	Motion of Wisconsin-Zinn Malting Corp. for a protective order on sales and production figures of Zinn Malting Co., Inc. (movant's former name), with aff. of Stanley Williams, aff. of mailing and notice of motion.

Date	Proceedings
1/27/64	Motion of Kurth Malting Co. for a protective order on sales and production figures, with affidavit of Walter A. Teipel, aff. of mailing and notice of motion.
"	Stipulation and consent order (Protective Order) that Ladish Malting Co. sales figures and figures of any individual maltster shall not be read orally in the court, but shall be examined by the Court and the record otherwise be deemed sealed and available only to the court, the parties and their respective counsel.
1/23/64	Govt's ltr. dated 1/22/64 stating that the govt. had decided to put in its case purely with documents, with no live witnesses, so that govt. would probably rest within two days commencing on 1/27/64.
1/27/64	Trial by the court (Ret) commenced.
1/28/64	" " " " continued. Govt. rests. Deft. Pabst Brewing Co.'s file motion for dismissal. Defts. to notify court on 2/4/64 if motion will be seriously pressed. If not, trial will resume 2/25/64.
"	Trial transcript, Volume I, Pages 1 to 122, Jan. 27, 1964.
1/29/64	Trial transcript, Volume II, Pages 123 to 230, Jan. 28, 1964.
2/ 4/64	Hearing (Ret): Conference with the court. Deft. will press motion to dismiss. Pltf. will file brief pointing out its case by 2/24/64. Deft.'s answering brief by 3/16/64. Pltf's reply brief by 3/23/64. Oral argument on 3/16/64, date for oral argument to be set.

[fol. 12]

2/ 7/64	Consent order for protection of records of Zinn Malting Co., Inc., on stip.
"	Consent order for protection of records of Wis. Malting Co., Inc., on stip.
"	Consent order for protection of records of Kurth Malting Co., Inc., on stip.

Date	Proceedings
2/24/64	Govt's brief in opposition to deft's motion to dismiss.
3/16/64	Brief of deft., Pabst Brewing Co., in support of its motion to dismiss.
3/30/64	Govt's reply brief to brief of deft., Pabst, in support of its motion to dismiss.
4/30/64	Hearing (Ret) on motion of deft., Pabst Brewing Co., to dismiss. Taken under advisement. Deft. to provide proposed findings and pltf. to respond. (2 wks and 2 wks.)
5/15/64	Pabst Brewing Co.'s proposed findings of fact and conclusions of law.
5/25/64	Transcript of 4/30/64 proceedings on deft's motion to dismiss.
6/ 1/64	Govt's response to proposed findings of fact submitted by the deft., Pabst Brewing Co.
9/22/64	Opinion of court holding that motion of deft., Pabst, for dismissal must be granted. Deft's counsel to prepare proposed findings of fact and conclusions of law and submit them to pltf. for approval as to form.
10/13/64	Findings of fact and conclusions of law.
"	Final judgment of dismissal, granting deft., Pabst Brewing Co.'s, motion for judgment of dismissal, and dismissing the complaint with prejudice.
12/11/64	Notice of appeal to the Supreme Court of the United States filed by the pltf. from the judgment entered on 10/13/64. Govt's certificate of service of notice of appeal on attys. in the case.
1/22/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U.S. until 3/15/65.
3/ 1/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U. S. until 3/29/65.
3/18/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U. S. until 4/30/65.

Date	Proceedings
4/22/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U. S. until 5/31/65.
5/28/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U. S. until 6/30/65.
6/29/65	Order, on application of Clerk of Court, extending time for docketing record on appeal in Supreme Court of U. S. until 7/31/65.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59-C-215

[Title omitted]

COMPLAINT—Filed October 1, 1959

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of section 7 of said Act.

2. The defendant Pabst Brewing Company transacts business and is found within the Eastern District of Wisconsin.

Defendants

3. Pabst Brewing Company (hereinafter referred to as Pabst), is named a defendant herein. Pabst is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Chicago, Illinois.

4. Schenley Industries, Inc. (hereinafter referred to as Schenley), is named a defendant herein. Schenley is a [fol. 14] corporation organized and existing under the laws of the State of Delaware, with its principal office in New York City, New York.

5. Val Corporation (hereinafter referred to as Val) is named a defendant herein. Val is a corporation organized

and existing under the laws of the State of Wisconsin, with its principal office in Madison, Wisconsin.

6. Subsequent to the acquisition, hereinafter described in paragraph 19, by Pabst of the assets and business of the Blatz Brewing Company (hereinafter referred to as Blatz), Blatz, a wholly-owned subsidiary of Schenley, amended its corporate charter to change its name to The Val Corporation. At the same time, a wholly-owned Pabst subsidiary, the Pabst Sales Corporation, amended its corporate charter, changing its name to the Blatz Brewing Company, and was thereafter, on February 27, 1959, merged into Pabst.

Trade and Commerce

7. The production of beer on a commercial scale was re-instituted in the United States on December 5, 1933, following the adoption of the twenty-first amendment to the Constitution. In the fiscal year ending June 30, 1935, there were 750 breweries operating in the United States producing 42,782,378 barrels of beer. Through merger, consolidation and natural attrition, this number has decreased so that by June 30, 1958, there were 252 breweries producing 84,790,791 barrels of beer annually. By 1957 the 25 largest companies engaged in the brewing of beer in the United States accounted for approximately 69 percent of total national sales of beer.

8. Pabst owns and operates breweries located in Milwaukee, Wisconsin, Peoria Heights, Illinois, Newark, New Jersey, and Los Angeles, California. Beer produced by Pabst in these breweries was in 1957 sold under the brand names, "Pabst Blue Ribbon Beer and Ale", "Pabst Old Tankard Ale" and "Andeker Beer" in 48 States and in the District of Columbia, and under the brand names "East-[fol. 15] side Beer", "Eastside Old Tap Lager", and "Old Mission Beer" in six Western States. Pabst in the course of its business has been and is now selling beer in a continuous flow in interstate commerce.

9. Prior to the acquisition hereinafter alleged, Blatz owned and operated a brewery located in Milwaukee, Wisconsin. In 1957 beer produced by Blatz in this brewery was sold, principally under the brand name "Blatz Pilsner", in 38 States and in the District of Columbia. Blatz in the

course of its business sold beer in a continuous flow in interstate commerce.

10. In general, beer is distributed to retail outlets by local wholesalers who purchase the beer from brewing companies. Prior to the acquisition hereinafter described in paragraph 19, in many areas beer brewed by Pabst and beer brewed by Blatz were distributed by different wholesalers. Some wholesalers who distributed beer brewed by Pabst and some wholesalers who distributed beer brewed by Blatz also distributed other brands of beer.

11. Pabst in 1957 sold a total of approximately 2,593,223 barrels of beer and was the 9th largest seller of beer in the United States. In 1957 Blatz sold a total of approximately 1,271,378 barrels of beer and ranked 18th in volume of sales among United States brewers. The combined 1957 sales of both Pabst and Blatz were exceeded by only four other brewers in the United States.

12. Prior to the acquisition hereinafter alleged, beer produced by Pabst under the brand names listed in paragraph 8 above was sold in competition with beer produced by Blatz under the brand name "Blatz Pilsner" in each of the sections of the country in which both Pabst and Blatz brands were sold. These brands were also sold in competition with the brands of beer produced by other brewers which were sold in these areas.

[fol. 16] 13. In 1957, 735,978 barrels of "Pabst Blue Ribbon Beer and Ale", "Pabst Old Tankard Ale" and "Andeker Beer", approximately 33% of the total sales of these brands, were sold within a three state area encompassing the States of Illinois, Michigan and Wisconsin, and 341,779 barrels, or approximately 15% of total sales of the above named brands were sold in the State of Wisconsin alone. In that year 831,527 barrels of Blatz-brewed beer, approximately 65% of that company's total sales, were sold in such three state area, and 392,722 barrels, or approximately 31% of total sales of beer brewed by Blatz were sold in the State of Wisconsin alone.

14. Total 1957 sales of beer by all brewers in the three state area encompassing Illinois, Michigan and Wisconsin amounted to 14,219,516 barrels. The sales in this area of beer produced by Pabst and Blatz, as set forth in paragraph 13 above, accounted for 5.2% and 5.8% respectively of this total. The combined sales of beer brewed by

Pabst and Blatz thus amounted to 11% of said total and were exceeded only by the sales of beer brewed by the Stroh Brewery Company whose 1957 sales acounted for 11.5% of the total.

15. In the year 1957, there were 38 breweries operating within the State of Wisconsin, a greater number than in any other State. Of these breweries only five, including the Pabst and Blatz breweries, produced more than 250,000 barrels of beer, while 30 breweries produced less than 100,000 barrels each.

16. Within the State of Wisconsin, 1957 sales of beer by all brewers amounted to 3,066,690 barrels. The 1957 Wisconsin sales of beer brewed by Pabst and Blatz, as set forth in paragraph 13 above, amounted to 11.1% and 12.8% respectively of this total. The combined sales of beer brewed by Pabst and Blatz thus accounted for 23.9% of total Wisconsin beer sales, compared with 12.1% of the total accounted for by sales of beer brewed by Theo. Hamm Brewing Company, the next largest company in volume of sales within the State.

[fol. 17] 17. Malt, a primary ingredient in the brewing process, is produced by Pabst for use in its own breweries and for use in the manufacture of other products. Prior to the acquisition hereinafter alleged, Blatz purchased its requirements of malt from outside suppliers. In 1957 Blatz' malt purchases amounted to approximately $1,957-197.

18. Subsequent to the acquisition hereinafter alleged, Pabst discontinued operation of the former Blatz brewery. Pabst now produces "Blatz Pilsner" in some or all of the breweries which it operated prior to said acquisition.

Offense Charged

19. On or about July 30, 1958, Pabst acquired the assets and business of Blatz for $11,000,000 in cash, $3,500-000 in debentures, 200,000 shares of the common capital stock of Pabst, and a common stock purchase warrant for an additional 35,000 shares of Pabst's common capital stock. The effect of this acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in the United States and in various sections thereof, including the State of Wisconsin

and the three state area encompassing Wisconsin, Illinois and Michigan, in violation of Section 7 of the Clayton Act in the following ways among others:

(a) Actual and potential competition between Pabst and Blatz in the sale of beer has been eliminated;

(b) Actual and potential competition generally in the sale of beer may be substantially lessened;

(c) Blatz has been eliminated as an independent competitive factor in the production and sale of beer;

(d) The acquisition alleged herein may enhance Pabst's competitive advantage in the production and sale of beer to the detriment of actual and potential competition;

(e) Industry-wide concentration in the sale of beer will be increased.

20. The offense alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

[fol. 18] Prayer

Wherefore, Plaintiff prays:

1. That the acquisition by Pabst described in paragraph 19 above of the assets and business of Blatz be adjudged to be in violation of section 7 of the Clayton Act.

2. That under such terms and conditions as this court may prescribe, defendant Pabst be required to divest itself of all business and assets of Blatz.

3. That under such terms and conditions as this court may prescribe, defendants Schenley and Val be required to divest themselves of all Pabst common capital stock which was received for the assets and business of Blatz and that said defendants be enjoined from exercising any rights under the common stock purchase warrant for 350,000 shares of Pabst common capital stock also received for said assets and business of Blatz.

4. That the plaintiff have such other and further relief as this court may deem just and proper in order to restore the assets and business acquired from Blatz by Pabst as an independent competitive factor in the production and sale of beer.

5. That pursuant to section 15 of the Clayton Act an order be made and entered herein requiring defendant Schenley to be brought before the court in this proceeding and directing the Marshal of the Southern District of New York to serve summons upon it.

6. That pursuant to section 15 of the Clayton Act an order be made and entered herein requiring defendant Val to be brought before the court in this proceeding and directing the Marshal of the Western District of Wisconsin to serve summons upon it.

[fol. 19] 7. That the plaintiff recover the costs of this suit.

/s/ Alan S. Ward. /s/ Robert A Hammond III, Attorneys, Department of Justice. /s/ Earl A. Jinkinson. /s/ Dorothy Hunt, Attorneys, Department of Justice Midwest Office, Antitrust Division Chicago, Illinois

/s/ William P. Rogers, Attorney General. /s/ Robert A. Bicks, Acting Assistant Attorney General. /s/ George D. Reycraft, Attorney, Department of Justice. /s/ Edward G. Minor, United States Attorney.

[fol. 20] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Plaintiff,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants.

No. 59-C-215

MEMORANDUM DECISION—April 7, 1960

On October 1, 1959, the plaintiff, United States of America, filed its complaint against the defendants, Pabst Brewing Company, Schenley Industries, Inc., and The Val Corporation, alleging that the acquisition by Pabst on or about July 30, 1958 of all the assets and business of Val, formerly Blatz Brewing Company, a wholly-owned subsidiary of

Schenley, was violative of §7 of the Clayton Act, Title 15 U.S.C. §18. The plaintiff asked that the court adjudge the acquisition to be in violation of §7, that Pabst be required to divest itself of the business and assets of Blatz, that Schenley and Val be required to divest themselves of all Pabst stock and enjoined from exercising any rights under stock purchase warrants received for the assets and business of Blatz, and that the plaintiff have such other relief as the court deems proper to restore the assets and business acquired from Blatz by Pabst as an independent competitive factor in the production and sale of beer. Both Schenley and Val have filed motions for summary judgments of dismissal as to them.

The agreement of sale which gave rise to this proceeding was executed by Pabst, Blatz and Schenley on or about July [fol. 21] 30, 1958. Under the agreement, Pabst purchased the assets and business of Blatz for $11,000,000 in cash, $3,500,000 in debentures, 200,000 shares of Pabst common capital stock and a stock purchase warrant for 350,000 shares of Pabst common capital stock. The agreement was executed less than two weeks after a letter was sent from the Anti-Trust Division of the Department of Justice to the President of Blatz requesting information concerning the then proposed sale and stating that the acquisition of Blatz by Pabst raised certain questions under the anti-trust laws.

After the sale, Blatz changed its corporate name to the Val Corporation and was thereafter dissolved under the laws of Wisconsin effective on or about September 2, 1958. Its net assets, including most, if not all, of the consideration received by it from Pabst, were distributed to its sole stockholder, Schenley. Schenley has no interest in Pabst, except as holder of the stock and stock purchase warrant received by Blatz as partial consideration for the sale to Pabst and and subsequently distributed to Schenley upon the dissolution of Val.

The movants argue first that their joinder as parties defendant is improper since the complaint charges no violation by them of §7 of the Clayton Act or of any other law. The Government concedes that the movants have been charged with no offense, but contends that they are proper parties to this proceeding for the purposes of relief.

In a proceeding under §7 of the Clayton Act, the court has authority to grant relief not only against parties who are found to have violated that section, but also against other parties if such relief is necessary to eliminate the effects of an acquisition offensive to the statute. *United States* v. *E. I. DuPont De Nemours and Company* (1959) (N. D. Ill., E. D.) 177 F. Supp. 1. All parties against whom relief may be granted may properly be joined as parties defendant.

[fol. 22] The movants have admitted, albeit reluctantly, that neither of them would have to assume the burden of preparing for or participating in a trial of the merits. That either or both of them may elect to have an observer present at the trial is a matter for their own determination and is not entitled to consideration as a form of hardship.

Neither of the movants are strangers to the transaction which gave rise to this proceeding. Both were parties to the agreement of sale entered into on or about July 30, 1958. Both proceeded to a consummation of the sale with full knowledge of the fact that the Anti-Trust Division of the Department of Justice proposed to make a study of whether the transaction involved any violation of the anti-trust laws. The consideration for the sale of the assets and business of Blatz went to Blatz, now Val, and most if not all, of it was distributed to Schenley. Schenley still holds the stock and stock purchase warrants of Pabst which were part of the consideration for the sale. Because of the movants' close connection with the transaction here complained of, it is our opinion that, should the plaintiff prevail, some relief might be granted against them, and that they should be retained as parties pending determination of the relief, if any, to be granted.

The movants have further argued that they are not proper parties because should the court find that the acquisition of Blatz by Pabst was unlawful, no conceivable relief could now be granted against them, which would eliminate the effects of that acquisition. We believe that that argument is premature at this stage of the proceeding, and that the question of whether any effective relief can be granted against the movants must await the determination of the substantive issues.

The motions of the defendants, Schenley Industries,

Inc. and The Val Corporation for summary judgments of dismissal as to them are denied.

Dated, Milwaukee, Wisconsin, this 7th day of April, 1960.

Robert E. Tehan, U. S. District Judge.

[fol. 23] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C-215

[Title omitted]

ORDER DENYING MOTIONS OF DEFENDANTS, SCHENLEY INDUSTRIES, INC. AND THE VAL CORPORATION FOR SUMMARY JUDGMENTS OF DISMISSAL—April 7, 1960

The defendants, Schenley Industries, Inc. and The Val Corporation, having filed motions for summary judgments of dismissal as to them, and briefs and affidavits in support of and in opposition to said motions having been filed, and a hearing on said motions having been held, and the court having considered the pleadings, motions, affidavits and briefs, and the arguments of the parties, and being fully informed, and having this day filed its Memorandum Decision,

Now, Therefore, It Is Ordered: That the motions of the defendants, Schenley Industries, Inc. and The Val Corporation, for summary judgments of dismissal as to them be and the same are hereby denied.

Dated, Milwaukee, Wisconsin, this 7th day of April, 1960.

Robert E. Tehan, U. S. District Judge.

[fol. 24] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C-215

[Title omitted]

ANSWER OF DEFENDANT PABST BREWING COMPANY—
Filed April 15, 1960

Answering * the complaint as supplemented by Plaintiff's More Definite Statement filed January 27, 1960 with Respect to Paragraph 17 of the Complaint defendant, Pabst Brewing Company:

Jurisdiction and Venue

1. Admits that the complaint was filed and this action was instituted against defendant under the Act of Congress, commonly known as the Clayton Act, but denies that defendant has violated, is violating, or threatens or intends to violate Section 7 of the Clayton Act, 15 U.S.C.A. Section 18, and denies that plaintiff is entitled to the relief, or any part thereof, prayed for in the complaint.

2. Admits that it transacts business and is found within the Eastern District of Wisconsin.

Defendants

3. Admits that it is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Chicago, Illinois.

4. Admits that Schenley Industries, Inc. (hereinafter referred to as "Schenley"), is a corporation organized and [fol. 25] existing under the laws of the State of Delaware, with an office in New York City, New York.

5. Denies that Val Corporation (hereinafter referred to

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* Each numbered paragraph of this answer corresponds with and is addressed to the averments contained in the like numbered paragraph of the complaint or of Plaintiff's More Definite Statement.

as "Val") is a corporation organized and existing under the laws of the State of Wisconsin.

6. Admits that subsequent to the acquisition of the assets and business of Blatz Brewing Company (hereinafter referred to as "Blatz") by this defendant, Blatz, a wholly-owned subsidiary of Schenley, changed its corporate name to Val. Admits that Pabst Sales Co., a wholly owned subsidiary of this defendant amended its corporate charter and changed its name to Blatz Brewing Company, and was, on February 27, 1959, merged into this defendant.

Trade and Commerce

7. Avers that the production of beer on a commercial scale was reinstituted in the United States on April 7, 1933 following enactment of the Cullen-Harrison Act. Admits that during the fiscal year ended June 30, 1935 there were approximately 750 premises operated as breweries in the United States and that during the fiscal year ended June 30, 1958 there were approximately 252 premises operated as breweries in th United States. Avers that it lacks knowledge or information sufficient to form a belief as to whether this decrease in numbers occurred "through merger, consolidation and natural attrition" or otherwise. Avers that during the fiscal year ending June 30, 1935 United States breweries produced 45,228,605 barrels of fermented malt liquor (hereinafter referred to as "beer"), and that during the fiscal year ended June 30, 1958, 89,010,812 barrels of beer were produced in the United States. Avers that the figures of 42,782,378 and 84,790,791 barrels set forth in paragraph 7 of the complaint represent total tax paid and tax-free withdrawals of beer from production for sale or distribution during said years and not [fol. 26] the production of beer. Admits that on the basis of unofficial figures published by various trade journals 25 companies accounted for approximately 69 per cent of total taxpaid withdrawals of beer during 1957. (Throughout this answer references to years are calendar years unless specifically stated otherwise.)

8. Admits that it owns and operates breweries located in Milwaukee, Wisconsin; Peoria Heights, Illinois; Newark, New Jersey; and Los Angeles, California, and that it sold beer produced in these breweries during 1957 under one or

more of the brand names "Pabst Blue Ribbon and Ale," "Pabst Old Tankard Ale" or "Andeker Beer" in the 48 States and in the District of Columbia. Admits that it sold beer produced in these breweries during 1957 under the brand names "Eastside Beer" or "Old Mission Beer" in six western states, and under the brand name "Eastside Old Tap Lager" in three midwestern states, and that it has sold and is now selling beer in interstate commerce.

9. Admits that prior to the acquisition alleged in the complaint, Blatz owned and operated a brewery in Milwaukee, Wisconsin, and that during its fiscal year ended August 31, 1957 Blatz sold beer produced in this brewery under the name "Blatz Pilsner" in 38 States and in the District of Columbia, and that in the course of its business Blatz sold beer in interstate commerce.

10. Admits that, prior to the acquisition alleged in the complaint, in some areas beer brewed by Blatz and beer brewed by Pabst were distributed by different wholesalers. Admits that some wholesalers who distributed beer brewed by Pabst and some wholesalers who distributed beer brewed by Blatz, also distributed other brands of beer.

11. Admits that in 1957 it sold approximately 2,593,223 barrels of beer. Denies that in 1957 Blatz sold 1,271,378 barrels of beer, but avers that said sales were approximately [fol. 27] 1,241,709 barrels. Admits that on the basis of unofficial figures published by various trade journals, Pabst in 1957 was the ninth largest seller of beer in the United States, and Blatz ranked eighteenth in volume of sales among the United States brewers. Admits that adding together sales of Pabst and Blatz for 1957, the total was exceeded by sales of four other brewers in the United States.

12. Admits that, prior to the acquisition alleged in the complaint, beer produced by Pabst under one or more of the brand names listed in paragraph 8 of the complaint was sold in 38 States and the District of Columbia where "Blatz Pilsner" was also sold. Admits that brands of beer produced by other brewers were also sold where the Pabst and Blatz brands of beer were sold.

13. Avers that in 1957, 776,885 barrels of Pabst Blue Ribbon Beer and Ale, Pabst Old Tankard Ale and Andeker Beer, or approximately 29.9% of the total sales of Pabst brewed beer, were sold in the three-state area encompassing Michigan, Illinois and Wisconsin, and that 340,378 barrels,

or approximately 13.1% of such total sales, were sold in Wisconsin in 1957. Avers that 827,111 barrels of Blatz brewed beer or approximately 66.7% of Blatz total sales, were sold in the states of Michigan, Illinois and Wisconsin; that 388,679 barrels, or approximately 31.3% of such total sales, were sold in Wisconsin in 1957. Avers that less than 42% of the total sales of both Blatz brewed beer and Pabst brewed beer during 1957 were made in those three States and that less than 20% of such sales were in Wisconsin in 1957. Denies that the aforesaid states, or any one or more of them have any competitive significance as market areas for sale of beer, and denies that said states or any one or more of them constitute a relevant market area or constitute a "section of the country" as such words are used in Section 7 of the Clayton Act, 15 U.S.C.A. Section 18.

14. Avers that total 1957 sales of beer in Illinois, Wisconsin and Michigan by all brewers amounted to 14,227,720 [fol. 28] barrels of beer, and that sales in such states by Pabst and Blatz accounted for 5.5% and 5.8%, respectively, of this total, or a total percentage of 11.3%. Admits that the total sales of beer of both Pabst and Blatz in Illinois, Michigan and Wisconsin were exceeded by sales in said States of approximately 1,629,704 barrels of beer brewed by the Stroh Brewing Company. Avers that in Illinois in 1957, 1958 and 1959 the total sales of beer brewed by both Pabst and Blatz were exceeded by sales of beer produced by Anheuser-Busch, Inc. and by Joseph Schlitz Brewing Company; and during 1958 and 1959 by sales of Theodore Hamm Brewing Co. and Falstaff Brewing Co.; and that in Michigan in 1957 the total sales of both Pabst and Blatz were exceeded by sales of beer produced by Stroh Brewing Company, by Goebel Brewing Company, by Pfeiffer Brewing Company and by Drewrys, Ltd. U.S.A. Denies that the aforesaid states, or any one or more of them, have any competitive significance as market areas for sales of beer, and denies that said states or any one or more of them constitute a relevant market or constitute a "section of the country" as such words are used in Section 7 of the Clayton Act, 15 U.S.C.A., Section 18.

15. Admits that in 1957 there were 38 breweries operating in Wisconsin which were more breweries than were operated in any other single State; avers that the 1957 report of

the Wisconsin Department of Taxation indicates that five Wisconsin breweries, including the Pabst and Blatz breweries, produced over 250,000 barrels of beer during 1957; eight breweries produced over 100,000 barrels of beer; and that 30 breweries produced less than 100,000 barrels.

16. Avers that in the state of Wisconsin in 1957 sales of beer by all brewers as reported by the Wisconsin Department of Taxation amounted to 3,066,690 barrels and that 11,445,308 barrels of beer were produced by Wisconsin breweries in that year. Avers that during 1957 388,679 [fol. 29] barrels of Blatz beer and 340,378 barrels of Pabst beer were sold in Wisconsin and that the total sales of Blatz and Pabst in Wisconsin amounted to 6.4% of the beer produced in Wisconsin in 1957. Admits on the basis of the aforesaid reports, that beer brewed by Pabst and Blatz amounted to 11.1% and 12.7%, respectively, of total Wisconsin sales by all brewers, or a total percentage of 23.8% of such sales in 1957. Admits on the basis of the aforesaid sources that beer brewed by Theodore Hamm Brewing Company outside the state of Wisconsin accounted for 12.1% of said sales, and avers that beer brewed by brewers outside Wisconsin and sold in Wisconsin accounted for 22.7% of said total sales in Wisconsin. Denies that the aforesaid State has any competitive significance as a market area for sales of beer, and denies that the aforesaid State constitutes a relevant market or constitutes a "Section of the country" as such words are used in Section 7 of the Clayton Act, 15 U.S.C.A., Section 18.

17. Admits that malt is a primary ingredient in the brewing process and is produced by Pabst for use in its breweries, and for use in the manufacture of other products. States that the quality and composition of malt used to brew beer is of vital importance to every brewer including Pabst. Avers that unless the quality and composition of malt are carefully controlled and checked by the brewer, brews will not be uniform and the particular flavor and quality of the brand of beer being brewed will be adversely affected. Avers that other brewers as well as Pabst produce their own malt for use in their own products. Avers that Pabst malt is not used by Pabst for brewing all brands of beer brewed by Pabst, but that for certain brands, different types of malt produced by other malt suppliers which have different

characteristics than Pabst malt are used. Answering Plaintiff's More Definite Statement filed herein January 20, 1960:

(1) Admits that prior to the acquisition alleged in the complaint Blatz purchased malt from suppliers and [fol. 30] states that in 1957 its malt purchases amounted to approximately $2,105,000.

(2) Admits that prior to the acquisition alleged in the complaint Pabst produced malt in Milwaukee, Wisconsin and in Peoria, Illinois. Avers that at all times prior to the acquisition alleged in the complaint Pabst purchased malt from other suppliers. Avers that its need for malt varied with the needs of its breweries and that from time to time prior to the acquisition alleged in the complaint its malt capacity was inadequate to supply its own needs.

(3) Denies that since the acquisition alleged in the complaint "Blatz" brand beer has contained no malt purchased from outside sources.

(4) Denies each and every allegation, averment or inference contained in paragraph 4 of Plaintiff's More Definite Statement.

(5) Denies each and every allegation, averment or inference contained in paragraph 5 of Plaintiff's More Definite Statement.

(6) Denies each and every allegation, averment or inference contained in paragraph 6 of Plaintiff's More Definite Statement.

18. Admits that the Blatz brewery in Milwaukee, Wisconsin is presently not in operation and is in a standby condition. Admits that it now produces Blatz Pilsner in all of its breweries.

19. Admits that on or about July 30, 1958 it acquired the assets and business of Blatz for $11,000,000 in cash (plus adjustments for Blatz profits from May 31 to July 31, 1958), $3,500,000 in debentures, 200,000 shares of its common capital stock and common stock purchase warrants for an additional 350,000 shares of such stock. Denies each and every other allegation, averment or inference contained [fol. 31] in paragraph 19 and the subparagraphs thereof. Avers that after 1952 its sales and profits drastically declined; that for more than two years immediately prior

to the acquisition its sales not only continued to decline, but it also suffered serious operating losses and that in 1958 it was faced with further critical and declining sales and increasing losses. Avers that in the exercise of their honest and informed judgment the Board of Directors and management of the company determined that the acquisition of Blatz was the only available solution for the very serious financial predicament of Pabst. Avers that the purpose of the acquisition was to avoid the serious consequences which in the judgment of the Board of Directors and management would have resulted from the continued sales decline and increasing losses then in prospect. Avers that the purpose and effect of the acquisition was to preserve and promote competition and denies that its effect has been or may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act.

20. Denies each and every allegation averment or inference contained in paragraph 20 of the complaint, and that the plaintiff is entitled to any of the relief prayed for in the prayer of the complaint.

21. Further answering, denies each and every allegation, averment or inference of the complaint and of the Plaintiff's More Definite Statement with Respect to Paragraph 17 of the Complaint which is not herein specifically admitted to be true.

Prayer

Wherefore defendant, Pabst Brewing Company, prays that the complaint be dismissed.

/s/ Ray T. McCann, 152 W. Wisconsin Avenue, Milwaukee 3, Wisconsin. /s/ John T. Chadwell, 135 S. LaSalle Street, Chicago 3, Illinois. /s/ [fol. 32] Glenn W. McGee, 135 South LaSalle Street, Chicago 3, Illinois, Attorneys for Defendant, Pabst Brewing Company.

Snyder, Chadwell, Keck, Kayser & Ruggles, 135 South LaSalle Street, Chicago 3, Illinois, Of Counsel.

[fol. 33] Affidavit of Mailing omitted in printing.

[fol. 34] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C215

[Title omitted]

ANSWER OF THE DEFENDANTS SCHENLEY INDUSTRIES, INC. AND THE VAL CORPORATION—Filed May 5, 1960

The defendants, Schenley Industries, Inc., a Delaware corporation, and The Val Corporation, a dissolved Wisconsin corporation, for their joint and several answer to the complaint, say:

First Defense

The complaint does not charge these answering defendants, or either of them, with any violation of law or other offense, and it fails to state a claim against them, or either of them, upon which relief can be granted.

Second Defense

Neither of these answering defendants is properly before this court under or pursuant to Sec. 15 of the Clayton Act (Sec. 25, Title 15 U.S.C.A.) and neither has an interest in the controversy nor in the subject matter of the suit.

Third Defense

The granting of any relief prayed in the complaint as against these answering defendants or either of them would constitute a violation of rights guaranteed to them and each of them under the Constitution of the United States, including, without limitation, vested property rights and freedom to determine what lawful business to engage or not engage in at any time.

[fol. 35]

Fourth Defense

The defendant, The Val Corporation, was duly and irrevocably dissolved under the laws of Wisconsin and all of its net assets distributed in liquidation to its sole stockholder, Schenley Industries, Inc., prior to the filing of the complaint in this action, and it has no corporate existence, property or personnel either for further engaging in business of any kind or for the purpose of the imposition against it of any relief prayed in the complaint.

Fifth Defense

No relief which could lawfully be granted against these answering defendants or either of them upon the allegations of the complaint could be effective in the public interest to eliminate the alleged effects of the acquisition of the business and assets of Blatz by Pabst, hence any relief against these answering defendants or either of them upon such allegations would not be remedial but punitive and improper.

Sixth Defense

The plaintiff, although timely possessed of reason to believe that a sale of the assets and business of Blatz was impending, failed to make any request or effort to delay or prevent its consummation. After the consummation, the plaintiff delayed filing its complaint for over a year after receipt of the pertinent information requested by it, by which time the assets involved had been irrevocably scrambled, the product distribution organization of the seller had disintegrated, the proceeds of the sale had passed to Schenley (as stockholder-distributee) upon completed corporate dissolution and liquidation of the seller and had been largely expended in or about the business of Schenley, and neither of these answering defendants could be placed in statu quo. The plaintiff's failure and delay in this respect are such as to render inequitable and unjust the granting of any relief under the complaint against these answering defendants or either of them, who are not charged in the complaint with any offense whatever and who have but exercised a lowful choice and right to cease from engaging in the beer business and to sell the properties associated therewith.

Seventh Defense

Answering * the allegations of the complaint (as supplemented by plaintiff's more definite statement with respect to paragraph 17 of the complaint filed on or about January 27, 1960) these answering defendants say:

1. They admit that the complaint was filed and this action was instituted against these defendants allegedly under the Act of Congress commonly known as the Clayton Act, but deny that these answering defendants have violated, are violating, or are threatening or intend to violate Section 7 of said Act (Sec. 18, Title 15 U.S.C.A.) or that the complaint so charges; they further deny that they are properly in the case under Sec. 15 of said Act (Sec. 25, Title 15 U.S.C.A.) and allege that they have no interest in the controversy or in the subject matter of the suit; they deny that plaintiff is entitled to any relief prayed for in the complaint as against them or either of them.

2-3. They admit the allegations of paragraphs 2 and 3 of the complaint, upon information and belief.

4. They admit the allegations of paragraph 4 of the complaint but deny that Schenley is properly named a defendant in the case.

5. They deny the allegations of paragraph 5 of the complaint and allege that Val was duly and irrevocably dis- [fol. 37] solved and all of its net assets distributed in complete liquidation and that it had ceased to have corporate existence, property or personnel for the purposes of any relief claimed against it, long before the filing of the complaint in this case.

6. They admit the allegations in the first sentence of paragraph 6 of the complaint. They admit the allegations in the second sentence of paragraph 6 of the complaint upon information and belief.

7-8. They are without knowledge or information suf-

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* Each numbered paragraph of this Seventh Defense corresponds with and is addressed to the averments contained in the like numbered paragraph of the complaint or of plaintiff's more definite statement with respect to paragraph 17 of the complaint, filed on or about January 27, 1960.

ficient to form a belief as to the truth of the allegations of paragraphs 7 and 8 of the complaint.

9-10. They admit the allegations of paragraphs 9 and 10 of the complaint.

11. Upon information and belief, they admit that Blatz sold approximately 1,271,378 barrels of beer in 1957. They are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11 of the complaint.

12. They admit the allegations of paragraph 12 of the complaint upon information and belief.

13-14-15-16. They are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 13-14-15 and 16 of the complaint.

17. They admit the allegations of sub-paragraph 1 of paragraph 17 of the complaint as set forth in the plaintiff's more definite statement with respect to paragraph 17 of the complaint. They are without knowledge or information sufficient to form a belief as to the truth of the allegations of subparagraphs 2 through 6 of paragraph 17 of the complaint as set forth in the plaintiff's more definite statement with respect to paragraph 17 of the complaint, filed on or about January 27, 1960.

[fol. 38] 18. They are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the complaint.

19. They admit the allegations in the first sentence of paragraph 19 of the complaint, and allege that Blatz as seller directly received the consideration for the sale. They allege that such sale was neither in violation, nor charged to be in violation, of Sec. 7 of the Clayton Act or of any other law and that by reason thereof Schenley, being chiefly engaged in the distilled spirits industry ceased from participation in the beer industry, by corporate subsidiary or otherwise, on terms approved by its directors in the best interests of Schenley and its thousands of stockholders. They further allege that after the sale they retained no interest or control in the divested assets or business, had no mutual or interlocking directors or employees with the purchaser, and neither was a supplier to or buyer from the purchaser. They further allege that the Pabst stock received as part of the purchase price is subject to no limitation, condition or understanding and that such stock is insufficient

in amount to elect a director of Pabst or carry any other control of Pabst. They are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19 of the complaint, if material to these answering defendants.

20. They deny each and every allegation, averment or inference in paragraph 20 of the complaint and show that the complaint alleges no offense against them or either of them. They deny that plaintiff is entitled to any relief prayed against them in the complaint. They allege that the Pabst stock and stock warrant mentioned in the complaint (Par. 19 and Par. 3 of the prayer) is valuable property (the value of the stock warrant is predicated upon the future since it would have no value if exercised today) received [fol. 39] as part of the consideration for a lawful sale, and thereafter lawfully acquired by Schenley upon the corporate dissolution and liquidation of the seller under the laws of Wisconsin and that any deprivation of or interference with such property in this case would be unconstitutional. They further allege that Val has neither corporate existence for the imposition of injunctive relief against it in this cause nor property nor personnel against which any such relief could operate, and further, that neither Schenley nor Val constitutionally and lawfully could be judiciously compelled in this case to engage in the beer business.

Wherefore, the defendants Schenley Industries, Inc. and the Val Corporation pray that the complaint against them be dismissed.

/s/ Robert S. Marx, Roy G. Holmes, 900 Tri-State Building, Cincinnati 2, Ohio. and Ralph M. Hoyt, 735 N. Water Street, Milwaukee 2, Wisconsin. /s/ By Roy G. Holmes, Attorneys for Defendants, Schenley Industries, Inc. and The Val Corporation.

Of counsel:

Nicholas Wood Marx & Ginter, 900 Tri-State Building, Cincinnati 2, Ohio.

Shea & Hoyt, 735 N. Water Street, Milwaukee 2, Wisconsin.

[fol. 40] [File endorsement omitted.]

[fol. 41] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

BRANCH 1

Civil Action No. 59-C-215

UNITED STATES OF AMERICA, Plaintiff,

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES INC., AND THE VAL CORPORATION, Defendants.

Transcript of Proceedings Upon Pretrial Conference—May 15, 1961

Be It Remembered that heretofore, to-wit, commencing on Monday, May 15, 1961, at 10:30 o'clock A.M. of said day, the above entitled matter came on for hearing before the Honorable Robert E. Tehan, Chief Judge of said Court, upon the pleadings heretofore filed herein.

APPEARANCES:

Bertram M. Long, Esq. and Francis C. Hoyt, Esq., Attorneys, Anti-trust Division, on behalf of the United States of America, plaintiff;

Snyder, Chadwell, Keck, Kayser & Ruggles by John Chadwell, Esq., Glenn W. McGee, Esq., David Nelson, Esq., and Ray T. McCann, Esq. on behalf of Pabst Brewing [fols. 42-44] Company, defendant;

Ralph M. Hoyt, Esq. on behalf of Schenley Industries, Inc. and The Val Corporation, defendants.

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[fol. 43] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Well, make a statement of--we will make a statement of what our policy is here. Now, I am very much in favor of the production of the names and addresses of the witnesses with a brief description of the area in which

they are going to testify and the exceptions to it, and allow this to be known to both sides.

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[fol. 44] The Court: It would seem to me here that if the Government—the Court is willing to proceed with all efforts needed to make available to the Government—in fact, the Government doesn't have to call on the Court, usually it has gotten it through the Grand Jury proceedings, and the rest of that, and other types of discovery; but then I would think that we would then best be able to proceed, certainly from the Court's position. If when the Government then is in a position, finally made an analysis of its case, it then just points out all the witnesses, the types of proof, the areas to be covered, then we can take that as the work product that we want to subject to analysis. We could go into the geographic or the relevant lines of either materials, impact, or anything like that, I would say, and I think we then would—both the Government and the parties and the Court would be in much better shape then to just see how narrow we could make this. Then there'd be a reasonable time, that having been resolved, what the areas to be covered are relevant to the inquiry here, then for this time of preparation, then there will be a production on the part of the defendants for their area, and then if the Government needs a reasonable time they will be allowed that, and then the case ought to be in one final shape-up, and it is on.

[fol. 45] Mr. Chadwell: It will save a lot of time. It is agreeable to us, that procedure.

Mr. Long: That is agreeable.

The Court: How best can we implement that then? I think that is for the Government now to state where—you have been furnished considerable information as to dealers and distributors here and the rest.

Mr. Long: Yes.

The Court: And you have been able to use, as I understand, one of the agencies of the Government to make some checks?

Mr. Long: Yes.

The Court: And where, I assume, under that procedure you have felt that there is a reason why the attorneys have gone out there, like a productive witness, how long would

that procedure take you to the time you, let us say, pretty well exhausted the search or the proof?

Mr. Long: I would think on that particular phase of the Government's proof that we probably would have selected our witnesses—oh, I think, maybe made a final selection maybe in a month or two months.

The Court: I'd rather be sure than to have to postpone the thing.

[fol. 46] Mr. Long: Mr. Hoyt points out there is still some more work for the F.B.I. to put in—additional distributors for the F.B.I. to contact.

Mr. Chadwell: You are talking about just distributor witnesses?

Mr. Long: We are talking about that first. We have interviewed—the F.B.I. and our people have interviewed a substantial number of these names which will be furnished by the defendants, as the Court orders. That is not completed yet and may be that would be two months that it would take to complete that, and that is that phase; and then we will select our distributor witnesses there, and that is that phase of the case; then——

Mr. Chadwell: Complete it in 60 days?

Mr. Long: Yes, that is distributors.

The Court: I prefer you give yourself a generous time.

Mr. Long: I think 90 may be better there. It may take a little longer to finish that. Depends upon the speed the Bureau goes through it.

The Court: I am not interested in the time. I am thinking of the time at the end of which time you will have had submitted your completed work sheet and list; that is not only investigation but I assume analysis.

Mr. Long: Yes.

[fol. 47] The Court: I assume you could have generally the—well, we'd like pretty much close to a commitment that these witnesses are going to be called by all odds so that it is unnecessary for the defendants to go out and investigate and perhaps examine them, and the rest of that, so I'd like that, and I think it is the only way to proceed in this case.

Mr. Long: Well, I think within say three months that we will have made a selection not only of the distributor witnesses but our other witnesses.

The Court: What I am concerned about—I think our

most fruitful session will be that next one at which you will come in here and you will have listed here a list of witnesses, the area in which they are going to testify and identification of any particular incidences or conditions or the rest that they are going to take into consideration; that is, for instance, a relationship to a brewery which is in Wisconsin or some place, Minnesota, Dakotas, or something like that, so that that area will be one that will be alerted to.

Mr. Long: I feel within that period of time there—I say in fall, an early date in the fall, maybe before then—certainly try before then to have selected the witnesses, distributors, and other classes of witnesses the Government is going to offer in trial of the case, and general nature of [fol. 48] the proof, areas covered by the testimonial witnesses, testimonial evidence, and selection also of the documents that the Government is going to offer in proof, and I think they can submit it without bothering the Court—they can be submitted to counsel informally, and probably we can resolve and arrive at it without having to bother the Court on that.

There is a problem that we have talked generally about, and that is their statistics. This case I would think——

The Court: Let's not get into that. I have a thought here. What we are really doing is setting out the summer as a time when rather substantial preparation could be made here. Perhaps an interim report might be helpful to you rather than for the defense to just sit and waiting 90 days now for you to give it. I suggest maybe midway in the point that when when you have definitely established these are the particular persons then perhaps a month or two months, or such period, then you just establish that so the adversary may proceed. I think that would be helpful.

Mr. Long: I think that would be agreed.

Mr. Hoyt: Like one class—all distributors.

Mr. Chadwell: If you give us names of witnesses as you decide on them without waiting for the final decisions, as [fol. 49] the Court has indicated, it would be helpful to us, of course. But in addition to names of witnesses, we must have this other information of the type that I have suggested, what line of commerce are you——

The Court: I am assuming that, Mr. Chadwell.

Mr. Chadwell: Yes.

The Court: I thought perhaps just mark out in black and white certain areas one, and then another hiatus there. It occurs to me certainly within a month you are going to have very definitely an idea that there is no question you are going to specify these witnesses that you have already processed. They are going to be called. Just seems to me a disclosure at that time with a firm statement that they are going to be called would allow the defense to go ahead.

Mr. Long: Yes, we would have some within whatever period the Court would set.

Mr. Hoyt: Otherwise the Court and counsel prefers this in installments?

The Court: That is right. Make it 30, 60 and 90 days, and then at 90 days we will expect your whole case in.

Mr. Long: Then within that period or maybe the—maybe at the second installment the Government then would be prepared to state, as I understand the Court has already [fol. 50] said, under the Government theory of the case that would cover lines of commerce and the sections of the country. That could be furnished. I would think that might be something that would be worthy of a pretrial conference at which time the Government then would make known to the court the lines of commerce and sections of the country.

Mr. Chadwell: That is satisfactory. Of course, we'd have to get some time after that for getting into some of these areas.

Mr. Long: Yes.

Mr. Chadwell: I suppose the Court has in mind a second pretrial conference somewhere after the 90-day period?

The Court: Yes. It would seem to me to follow this: The Government prepares, analyzes and then makes a disclosure in which they state: We are going to call these people as witnesses. This is the description of what we hope they will testify to, and relationship with so-and-so breweries has been their experience; they will be able to testify with relationship to those particular breweries, whatever it is.

Now, then, there are some of those—when that disclosure is made and can be made, as I indicated, at periodic times [fol. 51] to allow you to have some grist at the mill——

Mr. Chadwell: Yes.

The Court: (Continuing)—then you can proceed on. But there are some that you think are so clearly outside of what will be relevant scope that at this next pretrial that I have, that at that time you'd want to discuss whether or not such a witness should be allowed, that you should not have to go to No. 1, prepare for his examination and the rest, you'd much prefer to have the Court rule on whether or not that isn't clearly outside the scope and that you will not have to prepare on it—I assume that would be about the basis.

Mr. Long: I don't know whether——

The Court: I am assuming you might come in here with the names of 40 witnesses, most are executives or having some relation to the brewery industry. You will furnish enough identification there as to what they are going to testify to and with the knowledge that counsel have through their own brewery they might have some reservation as to whether or not this could by any conceivable stretch of the imagination be relevant here, but before going into further discovery proceeding they would then want to have some discussion as to whether or not under the theory here as to whether or not they should have to go to make preparation for it.

[fol. 52] Mr. Long: I would think that probably can be worked out.

The Court: I don't know what is going to be relevant here. I am only surmising what I think are going to be some of the objections.

Mr. Long: I would think it would be probably quite helpful, your Honor, if things like that could be resolved, either decided to be relevant or to be outside the purview of the case there. Maybe at an early stage of the proceedings like this may be a little early to arrive at that.

The Court: On that point, when we are dealing with a little something more tangible than abstractions we can make better rulings, and I think even before rulings I think perhaps there can be stipulations or perhaps realizations that this is not quite——

Mr. Long: Yes.

The Court: Then we have arrived at a point where I understand it is seemingly—it seemingly meets acceptance that over the period of the next 90 days with leave on your

part to and encouragement of the Court if you can make an interim report that you will then file or furnish to the adversaries here a list of all of the witnesses that you propose to call in to trial of this action with a description of [fol. 53] their testimony, the areas in which they are going to testify to with allusion to any type of documentation, whether it be on a statement of accounts or anything, that reasonably the defense ought to be alerted to. What I want is enough of a description for them to understand just what this witness is going to testify about, the direct and tangible matters this witness is likely to disclose. That should arise at a point where we can have what ought to be fruitful discussion of a half a day or so, and then at that time we can make preparations at that time to see how much time the defense will need to meet that; also to present to the Court the objections they might have to what seemingly is the type of proof that is going to be urged upon the Court on grounds of relevancy.

Does that seemingly meet with the Government's——

Mr. Long: That is acceptable.

The Court: Now what about the reaction of the defense?

Mr. Chadwell: Well, we are certainly agreeable to that. I would like to ask one question, and that is whether the Government has in mind at this time any further discovery? They have gotten a great mass of information from us, and I believe at one point and perhaps the last time we were up here the Government indicated an intention to take some depositions.

[fol. 54] Mr. Long: Yes, we have. Not a great number of depositions, but we have some depositions we are going to take very soon.

Mr. Chadwell: That'd be in advance of trial, you assume?

Mr. Long: I assume.

The Court: I assume within this 90-day period?

Mr. Long: Yes.

Mr. Chadwell: I think we ought to have names of the proponents——

The Court: Let me interrupt. For clarification, it is my conception that when we establish this 90 days that the Government has been on this case for some time and needs only 90 days to finalize its preparations.

Mr. Long: That is right.

The Court: And that includes all types of preparations?

Mr. Long: That is correct.

Mr. Hoyt: That is correct.

The Court: All right.

Mr. Chadwell: I didn't understand that, and I now do understand it. Well, this is—that general procedure is certainly satisfactory to us.

Now, I am assuming that at the end of that 90-day period [fol. 55] it is not contemplated that the Government will furnish to us the documents that they expect to have ready to put into evidence, or will you do that?

Mr. Long: We will certainly endeavor to do that, yes.

Mr. Chadwell: We ought to have a list of your exhibits, both statistical and other types of exhibits, you expect to put in evidence, and I didn't understand that you expect to have that ready.

Mr. Long: Yes.

The Court: I would wonder—I don't think it is too burdensome—I am willing to relax the 90 days, but I contemplated that you would by that time have completed your investigation which includes the documentation as well as the live witnesses, and perhaps it'd be best—I don't see it as too burdensome—that you then produce not only the list, the discription, but then also list your exhibits in relation to the witnesses. The Court, for good reason, will relax the 90 days. And you are going to have one go-around on this, but the Court at that time believes you ought to be able to evaluate all of the written and all of the oral, and then produce your documentation. If your documentation, for instance, is going to include some exhibits, some correspondence, or even audits from the West Coast Brewery, that ought to be made available. Do you agree?

[fol. 56] Mr. Long: Yes, sir, I think it should.

The Court: Should be indemnified with that witness; is that agreeable?

Mr. Long: Yes.

The Court: Ninety days?

Mr. Long: Ninety days may not be quite sufficient.

The Court: I'd rather have it definite in this style so the next time it can be very fruitful. It ought to be done also sufficiently in advance of our meeting next time so that the defense can have had a chance to evaluate it.

Mr. Chadwell: We can't come up here and get this flood of documents right here and make any progress.

Mr. Long: I wonder if in 90 days we could make available to counsel this material that the Court is calling for, these disclosures, and then some time after that giving them a little time if we then could have a pretrial conference?

Mr. Chadwell: That is what I hoped it could be.

The Court: All right. Then as you see it, you believe we can carry out what we have here suggested, that is, you will have produced really the substance of the case you are going [fol. 57] to urge upon the Court: you will be able to complete your investigation, all of this discovery here, such discovery as remains to be taken, and correlate the documentation to the witnesses and have, I assume, copies. Can we look forward to copies?

Mr. Long: Yes, sir.

The Court: All right. If you could do that in 90 days, then how much time would be realistically needed—all the time I am thinking of is for an evaluation to present your comments to the Court. You are going to be allowed additional time.

Mr. Chadwell: Yes, sir. We will need additional time. If you say 90 days, that is August 15.

Mr. Long: That is August 15.

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[fol. 58] The Court: Pardon me. You are right. I am asking the plaintiff now to make the disclosure. I will hereafter, of course, call upon the defense to do the same thing I am asking you to do.

Mr. Chadwell: We certainly expect to cooperate along this line.

Mr. Long: Yes, we do, too. I don't visualize any problem. The area of the proof that we will furnish to them, I think would be adequate certainly for their purposes and know what they have to meet. I don't anticipate there being any trouble. This is not an awfully abstruse, I mean testimony of a witness. I don't expect to spend hours and hours on the stand. I think they are affected some way with this, and testify to it and state it.

Mr. Hoyt: Especially your distributors.

Mr. Long: I wouldn't think that would be difficult to furnish them what we hope to prove by these witnesses.

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[fol. 59] The Court: So in that wise, why you might even, under such circumstances, so describe the witness and tell precisely all he is going to testify to. Many of them might be accumulative and might be agreed to.

Mr. Long: Certainly we will endeavor to do that. If there can be an agreement on statistics, we can whittle this time so that it can no longer be denominated as a protracted trial. We can leave to our arguments maybe all of the voluminouses of the case—maybe.

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[fol. 60] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59-C-215

[Title omitted]

PRE-TRIAL ORDER No. 1—July 7, 1961

A preliminary pre-trial conference was held in this cause on May 15, 1961 and after hearing arguments and discussion of counsel it appeared to the Court, and the parties agreed, that the most expeditious manner in which to handle discovery and other matters now pending before the Court was to permit the plaintiff to review its evidence and make its choice as to the evidence and theories on which it will rely at the trial; and that plaintiff should, upon completion of such review and having made its choice, furnish such information to the defendants;

Therefore, It Is Ordered That:

1. Plaintiff, United States of America, is on or prior to September 15, 1961, to complete its preparations for the trial of its case, and on or prior to that date, to submit to counsel for the defendant Pabst Brewing Company the following:

(a) Names, addresses, and relationship with a brewery or the brewing industry of all witnesses whom the Government intends to call at the trial, together with a description of the testimony which it is contemplated will be given by such witnesses including therein the aspects of the case upon which such testimony will bear and the documents to which it may allude;

[fol. 61] (b) All documentary evidence on which plaintiff intends to rely including statistical material or exhibits prepared for the trial;

(c) A statement of plaintiff's theory of the case, including the line or lines of commerce, section or sections of the country, and anti-competitive effects of the acquisition which plaintiff intends to prove.

2. A second pre-trial conference is hereby set for October 9th, 1961 at the hour of 2:00 P.M. at which time counsel for defendants will present to the Court any comments or objections to the material submitted to them by the plaintiff in accordance with the above paragraphs of this order.

3. Plaintiff's discovery procedures shall be completed on or prior to September 15, 1961. As soon as possible the plaintiff will furnish to the defendant Pabst Brewing Company the names of witnesses which it wishes to depose for discovery purposes and arrange a schedule for such depositions.

Counsel for all parties are given leave and encouragement to cooperate to the fullest extent in reaching agreements and stipulations in carrying out the intent as well as the language of the foregoing.

Enter: Robert E. Tehan, United States District Judge.

Dated: July 9th 1961.

Agreed as to form

/s/ John T. Chadwell, Attorney for defendant Pabst Brewing Company.

[fol. 62] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

PLAINTIFF'S RESPONSE TO PRE-TRIAL ORDER—Filed September 18, 1961

Pursuant to the Court's order of July 7, 1961, plaintiff submits herewith the names and addresses of the following additional proposed Government witnesses:

Name	Address
Paul Kalmanovitz, President Maier Brewing Co.	500 East Commercial Street Los Angeles 12, California
Edmund B. Koller, President The Walter Brewing Co.	Hickory and Le Crosse Street Pueblo, Colorado
Tyrus R. Jones, Vice President Atlantic Brewing Co.	1549 Fullerton Avenue Chicago, Illinois
George J. Holas, President Pilsen Brewing Co.	3043-3065 West 26th Street Chicago, Illinois
J. Miner Culp, President Oertel Brewing Co.	1400 Story Avenue Louisville, Kentucky
John G. Hoyer, Vice President Frank Fehr Brewing Co.	412 Fehr Avenue Louisville, Kentucky
Richard C. Jones, Executive Officer Jackson Brewing Co.	620 Decatur New Orleans, Louisiana
R. Laiter Fitzsimons, President American Brewery, Inc.	1700 North Gay Street Baltimore, Maryland

Name	Address
Robert A. Schiffer, Vice President Goebel Brewing Co.	2001 Rivard Detroit, Michigan
Joe Petz, Sales Manager International Breweries, Inc.	1600 Fisher Building Detroit, Michigan
Elmo H. Bevington, President Matz Brewing Co.	210 Hickory Street Omaha, Nebraska
Thomas J. Fatato, Secretary and Sales Manager Eastern Brewing Corporation	334 North Washington Street Hammonton, New Jersey
[fol. 63]	
Bruce Berckmans, President International Breweries, Inc.	1600 Fisher Building Detroit, Michigan
Herbert Epstein, President Pfeiffer Brewing Co.	3740 Bellevue Detroit, Michigan
Paul A. White, Administrative Assistant The Pilsener Brewing Co.	6605 Clark Avenue Cleveland, Ohio
Philip F. Neuweiler, President Louis F. Neuweiler's Sons Brewers	401 N. Front Street Allentown, Pennsylvania
Edward Fitzgerald, Treasurer Fitzgerald Bros. Brewing Co.	498 River Street Troy, New York
James M. Mead, Treasurer Fred Koch Brewery, Inc.	15-25 West Courtney Street Dunkirk, New York
Marvin Bilsky, President Cleveland Sandusky Brewing Corp.	2764 East 55th Street Cleveland, Ohio

Name	Address
B. P. Bohannon, Chairman of Board Standard Brewing Co.	5801 Train Avenue Cleveland, Ohio
James Amento, President August Wagner Breweries	605 South Front Street Columbus, Ohio
Joseph V. Burns, President Eagle Brewing Co.	2nd and Mulberry Streets Philadelphia, Pennsylvania
Joseph T. Ortlieb, President Henry E. Ortlieb Brewing Co.	American and Poplar Streets Philadelphia, Pennsylvania
S. C. Berg, Accountant Gulf Brewing Co.	5301 Polk Avenue Houston, Texas
J. M. Delmar, Vice President Gulf Brewing Co.	5301 Polk Avenue Houston, Texas
J. F. Fesenmeier, President Fesenmeier Brewing Co.	1401 Madison Avenue Huntington, West Virginia
Frank Sitterding II, President Home Brewing Co.	1125 West Clay Street Richmond, Virginia
Patrick J. Curran, President Berlin Brewing Co.	277-283 Broadway Berlin, Wisconsin
Fred Effinger, President Effinger Brewing Co.	Baraboo, Wisconsin
Clarence Rothe, Office Manager Rahr Green Bay Brewing Co.	1331 Main Street Green Bay, Wisconsin
Fred W. Huber, Treasurer and Sales Manager Huber Brewing Co.	1208 14th Avenue Monroe, Wisconsin
Lorenz Kuenzl, Treasurer Oshkosh Brewing Co.	1642 Doty Street Oshkosh, Wisconsin

[fol. 64]

Name	Address
Richard F. Haidlinger, President Peoples Brewing Co.	1506 S. Main Street Oshkosh, Wisconsin
Roland J. Marx, Secretary George Walter Brewing Co.	200 S. Walnut Street Appleton, Wisconsin
Harold B. Bloomquist, President Rhinelander Brewing Co.	Rhinelander, Wisconsin
David Struther, Director of Central Sales Joseph Schlitz Brewing Co.	Milwaukee, Wisconsin
Henry Dheim, Jr., Vice President West Bend Lithia Co.	West Bend, Wisconsin
Roy E. Kumm, President G. Heileman Brewing Co.	915 S. 3rd Street LaCrosse, Wisconsin
Edmund C. Bloedorn, Sales Manager Fox Head Brewing Co.	Waukesha, Wisconsin

The brewery representatives listed above will testify that since the merger of Pabst and Blatz, they have been or probably will be adversely affected thereby.

The following witnesses, representatives of malt producing companies, will testify that before the merger of Pabst and Blatz, they sold substantial quantities of barley malt to the Blatz Brewing Company for the production of Blatz beer. They will further testify that since the merger they have lost most or all of this market.

Name	Address
F. E. Raraty, President Albert Schwill & Co.	141 West Jackson Boulevard Chicago, Illinois
James E. Sapp, Vice President Standard Brands	625 Madison Avenue New York, New York

Name	Address
Harry Eikenberry, Vice President Froedtert Malt Corporation	3830 W. Grant Street Milwaukee, Wisconsin
Herbert Kurth, Chairman of Board Kurth Malting Co.	2100 S. 43rd Street Milwaukee, Wisconsin
Herbert Ladish, President Ladish Malting Co.	828 N. Broadway Milwaukee, Wisconsin
Clarence Alt, Vice President Rahr Malting Co.	605 Washington Street Manitowoc, Wisconsin
C. Robert Morris, President Zinn Malting Co.	313 S. Water Street Milwaukee, Wisconsin

[fol. 65] The following are additional distributor witnesses:

Name	Address
George W. Betz	735 Fifth Avenue
Betz Distributing Co.	Berlin, Wisconsin
James H. Hall	3 Warehouse Drive
Hall Distributing Co.	Salisbury, North Carolina

Betz will testify that he has been affected by the Pabst-Blatz merger. Hall will testify concerning the termination of distributors.

It is expected that at trial these witnesses under subpoena will produce sales records demonstrating a loss of business.

The plaintiff proposes to offer into evidence the depositions of Haris Perlstein and Rocco B. Bunino.

The plaintiff proposes to offer in evidence the following documents:

The Brewers Almanac for 1960.
Modern Brewery Age—Blue Book Issue—1961.

Agreement dated July 30, 1958 between Blatz Brewing Company. Pabst Brewing Company, and Schenley Industries, Inc.

Annual reports of Pabst Brewing Company for the years 1955, 1956, 1957, 1958, 1959, and 1960.

Minutes of meeting of the executive committee of the board of directors of Pabst Brewing Company held on June 25, 1958; minutes of meeting of the board of directors of Pabst Brewing Company held on June 27, 1958; minutes of meeting of the executive committee of the board of directors of Pabst Brewing Company held on July 21, 1958; minutes of meeting of the board of directors of Pabst Brewing Company held on July 21, 1958.

All answers to plaintiff's interrogatories to Pabst Brewing Company and all documents produced by Pabst pursuant to plaintiff's motion to produce.

In addition to the above documents, the plaintiff intends at trial to introduce other documents which will be obtained by subpoena *duces tecum* in support of the testimony of witnesses hereinbefore listed.

[fol. 66] It is contemplated that the plaintiff and the defendant Pabst will enter into stipulations with respect to certain statistical material relating to beer sales, production, consumption, withdrawals, etc. The plaintiff proposes to offer certain charts in evidence which will be based on the stipulated statistics as well as statistics contained in *The Brewers Almanac, Modern Brewery Age,* and defendants' answers to plaintiff's interrogatories.

The plaintiff advises that the theory of the case is that the acquisition by the Pabst Brewing Company of the Blatz Brewing Company has substantially lessened competition in the beer industry and has created a reasonable probability that competition will be affected. The plaintiff contends as follows:

(a) That the State of Wisconsin, the three-State area of Wisconsin, Illinois, and Michigan, and the continental United States as a whole comprise various sections of the country where competition has been affected;

(b) That prior to the merger of Pabst and Blatz, the defendant Pabst and the Blatz Brewing Company were in competition in the various sections of the country hereinabove defined;

(c) That in the State of Wisconsin, Pabst is tending towards monopoly by increasing its relative posi-

tion in that market; that it presently accounts for approximately 32 per cent of all sales of keg beer and approximately 22 per cent of all sales of case beer in the State, or a total of about 26 per cent of all beer sales in the State;

(d) That in other sections of the country defined hereinabove the merger has adversely affected other breweries or may have such an affect, and may tend to create a monopoly;

(e) That there has been for many years a continual decline in the number of breweries operating in the United States;

(f) That since the merger, many beer distributors have been terminated, or threatened to be terminated, [fol. 67] and separate Pabst and Blatz distributorships have been combined, all to the injury of the canceled distributors and to the elimination of competition in the sale and distribution of beer;

(g) That manufacturers of malt used in the brewing of beer who before the merger sold barley malt to the Blatz Brewing Company have been deprived of a substantial market inasmuch as the malt requirements of Blatz are provided for by Pabst to the injury of these maltsters and in elimination of competition in the sale of malt.

The plaintiff reserves the right before trial to add the names of additional witnesses, additional documents, tabulations, and charts on the basis of newly acquired evidence.

/s/ Earl A. Jinkinson, /s/ Bertram M. Long. /s/ Francis C. Hoyt. /s/ Dorothy M. Hunt, Attorneys, Department of Justice, Room 404, United States Courthouse, Chicago 4, Illinois, WEbster 9-2395

[fol. 68] Proof of service omitted in printing.

[fol. 69] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C-215

[Title omitted]

ORDER FOLLOWING PRE-TRIAL CONFERENCE—November 22, 1961

The parties having appeared by their respective counsel at a pre-trial conference in the above matter, held pursuant to notice, on November 20, 1961, and said counsel having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following stipulations unless modified by the court to prevent manifest injustices;

1. Paragraph 1 (a) of the pre-trial order of July 7, 1961 provided in part that the plaintiff would submit to counsel for the defendant, Pabst Brewing Company, a listing of the names and addresses of all witnesses the plaintiff intends to call at the trial together with a description of each witness's relationship with a brewery or the brewing industry and of the testimony which the witnesses were expected to give at the trial. The plaintiff has thus far furnished the following information with respect to that provision:

A. The names and addresses of twenty-two proposed witnesses "who were formerly distributors for either Pabst or Blatz who will testify that they lost their distribution franchise after the merger of Pabst and Blatz and have encountered hardships and difficulties in finding adequate replacement for the line they lost."

[fol. 70] B. The names and addresses of two additional distributor witnesses one of whom "will testify that he has been affected by the Pabst-Blatz merger" and one of whom "will testify concerning the termination of distributors."

C. The names and addresses of thirty-nine proposed witnesses and a description of their connection with named

breweries as officers or employees together with a statement that they "will testify that since the merger of Pabst and Blatz, they have been or probably will be adversely affected thereby."

D. The names of seven malt producing company representatives who "will testify that before the merger of Pabst and Blatz, they sold substantial quantities of barley malt to the Blatz Brewing Company for the production of Blatz beer" and "that since the merger they have lost most or all of this market."

In addition to the above information, the plaintiff will furnish to counsel for the defendant Pabst Brewing Company, the names and addresses of all distributors, brewing company and malt company witnesses interviewed by the F.B.I., a description of records which the plaintiff will introduce in evidence to support the testimony of the witnesses it proposes to call, and a factual description of the nature of the testimony of such witnesses.

2. The plaintiff will specify those portions of *The Brewers Almanac* for 1960 and *Modern Brewery Age—Blue Book Issue*—1961, upon which it will rely at the trial.

3. It is understood that the plaintiff has listed all documentary evidence upon which it intends to rely except such documents as belong to witnesses referred to in Paragraph 1 hereof.

[fol. 71] 4. The plaintiff agrees that the line of commerce allegedly affected by the merger involved herein is the beer industry.

5. The plaintiff will furnish the information required in Paragraphs 1 and 2 hereof not later than January 10, 1962.

6. A further pre-trial conference will be held in this case on January 15, 1962, at 2:00 o'clock P. M.

Dated, Milwaukee, Wisconsin, this 22nd day of November, 1961.

Robert E. Tehan, U. S. District Judge.

[fol. 72] [File endorsement omitted.]

[fol. 73] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59-C-215

[Title omitted]

PLAINTIFF'S FURTHER RESPONSE TO PRE-TRIAL ORDER—Filed January 11, 1962

The plaintiff responds to paragraph 1D of "Order Following Pre-Trial Conference, dated November 22, 1961" submitting the following:

1. *List of Persons Interviewed by the FBI*

Name	Address	Type
William E. Fitzgerald, Jr., President Fitzgerald Brothers Brewing Co.	498 River Street Troy, New York	Brewery & Distributor
Frank W. Dunham, Secretary Hedrick Brewing Company, Inc.	410 Central Avenue Albany, New York	Brewery
Benedict F. Haberle, President Haberle Congress Brewing Co., Inc.	500 Butternut Street Syracuse, New York	Brewery
Walter J. Matt, President West End Brewing Company	811 Edwards Street Utica, New York	Brewery
John H. Lawlor, President Utica Brewing Company	610 Jay Street Utica, New York	Brewery
Robert L. Best Best Distributing Company	379 Hunt Street Watertown, New York	Distributor
Thomas McCabe, Treasurer John J. Boland Distributors, Inc.	630 Seventh Avenue Troy, New York	Distributor
Joseph Bavaso, General Manager Fitzgerald Bros. Brewing Company	Troy, New York	Brewery & Distributor
John J. Bioty, President B & B Beverages, Inc.	26 Allen Street Rutland, Vermont	Distributor
Alvin M. Cioffi, Treasurer B & B Beverages, Inc.	26 Allen Street Rutland, Vermont	Distributor
R. L. Randolph, President All State Beer, Inc.	354 Peters St., S.W. Atlanta, Georgia	Distributor
Marion Elmo Newlin Valley Distributing Company	618 Broad Street LaGrange, Georgia	Distributor
Dozier M. Williams Southern Wholesale Jobbing Co.	1330 Sixth Avenue Columbus, Georgia	Distributor
[fol. 74]		
Robert T. Burgess, Gen. Manager Northeast Sales Distributing, Inc.	Athens, Georgia	Distributor

Name	Address	Type
Francis D. McNamara, President Globe Brewing Company	327 S. Hanover St. Baltimore, Maryland	Brewery
L. N. Duncan, Vice President & General Manager Cumberland Brewing Company Queen City Brewing Company	711 N. Centre Street Cumberland, Maryland	Brewery
Harry Lowe Powers, Jr. Powers Distributors	827 W. Washington St. Hagerstown, Maryland	Distributor
Virginia M. Renner, Bookkeeper Powers Distributors	827 W. Washington St. Hagerstown, Maryland	Distributor
M. J. Dooney, Vice President Hampden-Harvard Breweries, Inc.	45–95 North Chicopee Willimansett, Mass.	Brewery
John M. Haffenreffer, Treasurer Haffenreffer and Co., Inc.	30 Germania Street Boston, Mass.	Brewery
Adolf Haffenreffer, Jr., President Enterprise Brewing Company	81–91 President Ave. Fall River, Mass.	Brewery
James P. Holihan, President Diamond Spring Brewery, Inc.	50 Diamond Street Lawrence, Mass.	Brewery
Samuel E. Brown, Secretary Dawson's Brewery, Inc.	29 Brook Street New Bedford, Mass.	Brewery
M. Joseph Stacey, President Worcester Brewing Company	60 Ellsworth Street Worcester, Mass.	Brewery
Carl W. Haffenreffer, Executive Vice President Narragansett Brewing Co., Inc.	New Depot Avenue Cranston, Rhode Island	Brewery
Arthur Epstein, Sales Manager Brockton Wholesale Beverage Co. Inc.	18–20 N. Montello St. Brockton, Mass.	Distributor
William J. Hoot, Executive Vice President Genesee Brewing Co., Inc.	100 National Street Rochester, New York	Brewery
Gilbert G. Hiemenz, Vice President William Simon Brewery	705 Clinton Street Buffalo, New York	Brewery
George M. Frauenheim, President Geo. J. Meyer Malt & Grain Corp.	1314 Niagara Street Buffalo, New York	Malt
Clarence A. Hammond, President Gohr Distributing Co., Inc.	80 Metcalfe Buffalo, New York	Distributor
Joseph Berman, President Butte Brewing Company	Butte, Montana	Brewery
Walter H. Jensen, President Great Falls Breweries, Inc.	410–14th St., S.W. Great Falls, Montana	Brewery
[fol. 75]		
Albert M. Orr, President Missoula Brewing Company	Madison Street Missoula, Montana	Brewery
Leroy W. Overcash, Former President Mountain Brewing Company	Roanoke, Virginia	Brewery

Name	Address	Type
C. Henry Ledwell, President C & G Sales Company, Inc.	1235 W. Morehead St. Charlotte, N. C.	Distributor
Mrs. Issie Elmore, Bookkeeper C & G Sales Company, Inc.	1235 W. Morehead St. Charlotte, N. C.	Distributor
Richard H. Hermann Formerly Southern Wine Company	382 Kimberly Ave. Asheville, N. C.	Distributor
Abe Levrant, Secretary Treasurer Canadian Ace Brewing Company	3950 S. Union St. Chicago, Illinois	Brewery
M. E. Becker, Assistant Secretary Canadian Ace Brewing Company	3950 S. Union St. Chicago, Illinois	Brewery
H. P. Heuer, President Peter Hand Brewery Company	1000 W. North Ave. Chicago, Illinois	Brewery
Joseph P. Sieben, Vice President Sieben's Brewing Company	1470 N. Larrabee St. Chicago, Illinois	Brewery
George A. Vogrin, General Manager Van Merritt Brewing Company	2415 West 21st St. Chicago, Illinois	Brewery
Frank J. Klein, Executive Vice President Star Union Products	101 Pike Street Peru, Illinois	Brewery
Frank B. Wales, Secretary Columbia Malting Company	141 W. Jackson Blvd. Chicago, Illinois	Malt
Robert E. Woods, Treasurer Albert Schwill and Company	141 W. Jackson Blvd. Chicago, Illinois	Malt
Floyd B. Spurlock, Sr. Vice President Fleischmann Malting Company	327 S. LaSalle St. Chicago, Illinois	Malt
Wallace Nathaniel Haws	119 Thompson Ave. Ukiah, California	Distributor
Mrs. Alma Young, Bookkeeper Midwest Beer Distributors, Inc.	Commerce Park Drive Dayton, Ohio	Distributor
Harold Young, President Midwest Beer Distributors, Inc.	Commerce Park Drive Dayton, Ohio	Distributor
Lee Coy, Owner Lee Coy Distributing Company	1900 S. Yellow Springs St. Springfield, Ohio	Distributor
John A. Hesselbrock, President Hudepohl Brewing Company	40 E. McMicken Cincinnati, Ohio	Brewery
Ambrose W. Crosby, Treasurer Berger Brewing Company	Central Parkway & Liberty St. Cincinnati, Ohio	Brewery
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Edward Schoenling, Jr., President Schoenling Brewing Company	1625 Central Parkway Cincinnati, Ohio	Brewery
Sumner Lyon, General Manager Central Grain & Malting Company	101 S. Downing St. Piqua, Ohio	Malt
Ronald E. Polen, Manager Springfield Beer Distributing Company, Inc.	236 Cliff Street Springfield, Ohio	Distributor

Name	Address	Type
Robert J. Krebs, Secretary Treasurer Homan Beverages, Inc.	Curtis & Woodlawn Sts. Middletown, Ohio	Distributor
Paul A. White, Administrative Asst. Pilsener Brewing Company	6605 Clark Avenue Cleveland, Ohio	Brewery
Paul MacDonald, Treasurer Carling Brewing Company	9400 Quincy Avenue Cleveland, Ohio	Brewery
William B. Norris, Vice President Carling Brewing Company	9400 Quincy Avenue Cleveland, Ohio	Brewery
T. R. Klinksick, Secretary Treasurer Buckeye Brewing Company	1501 Michigan Street Toledo, Ohio	Brewery
R. J. Renner, President Renner Company	203 Pike Street Youngstown, Ohio	Brewery
E. A. Renner, Jr., Asst. Secretary Renner Company	203 Pike Street Youngstown, Ohio	Brewery
Richard A. Esser. Vice President Treu House of Munch	501 High Street Toledo, Ohio	Distributor
Herman E. Gimbel, Manager Saltzgaber Distributing Company	32 South Adams St. Mansfield, Ohio	Distributor
Joseph E. Glynias, Manager Crystal Distributing Company, Inc.	3341 Superior Ave. Cleveland, Ohio	Distributor
Max Klein, President Bloom and Klein, Inc.	619 Cherry Ave., S.W. Canton, Ohio	Distributor
Max Goldman, Vice President Texas Wine & Liquor Company, Inc.	1322 Slocum Street Dallas, Texas	Distributor
D. R. Turpin, Manager Southwestern Distributing Company	103 Pierce Street Amarillo, Texas	Distributor
Ray Frost, Secretary Treasurer Coors Brewing Company	Golden, Colorado	Brewery
Howard Hosek, Office Manager Tivoli Brewing Company	1342—10th Street Denver, Colorado	Brewery
William Coors, President Coors Brewing Company	Golden, Colorado	Brewery
Robert E. Steer, General Manager Denver Beverage Sales Company	2161 Blake Street Denver, Colorado	Distributor
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Victor Niethammer, Co-Owner Western Distributing Company	2065 S. Coffman Ave. Casper, Wyoming	Distributor
Joe C. Montgomery Montgomery Beverage Company	Cheyenne, Wyoming	Distributor
Andrew Ellis, President Andrew Ellis Company, Inc.	1400 Weiss Street Saginaw, Michigan	Distributor
Miss Reona B. Wilson, Secretary Andrew Ellis Company, Inc.	1400 Weiss Street Saginaw, Michigan	Distributor
Mrs. Henry Kozak, Vice President Kozak Distributors, Inc.	8200 McDougall Hamtramck, Michigan	Distributor

Name	Address	Type
Henry Kozak, President Kozak Distributors, Inc.	8200 McDougall Hamtramck, Michigan	Distributor
Harold L. Richeson, President E & B Brewing Company	2437 Orleans Detroit, Michigan	Brewery
John W. Shenefield, Vice President Stroh Brewing Company	909 E. Elizabeth Detroit, Michigan	Brewery
Walter H. Geyer, Vice President Geyer Brothers Brewing Company	425 S. Main Street Frankenmuth, Michigan	Brewery
Arthur E. Mast, President Sebewaing Brewing Company	221 E. Main Street Sebewaing, Michigan	Brewery
Phillip Ruppe, President Bosch Brewing Company	West Memorial Road Houghton, Michigan	Brewery
Hugh Cavill, President Menominee-Marinette Brewing Co.	1400 First Street Menominee, Michigan	Brewery
Charles F. Driscoll, Asst. Treasurer H. W. Rickel and Company	1824 Adelaid Street Detroit, Michigan	Malt
Marvin K. Horner, Manager Motor City Beer Company	12 State Park Drive Bay City, Michigan	Distributor
John Michael Sheehan, Manager M. J. Sheehan Company	728 McKendricke, S.W. Grand Rapids, Michigan	Distributor
Clarence C. Stein, Owner Stein Distributing Company	1415 Belden Road Jackson, Michigan	Distributor
George Opfermann c/o Opfermann Beer Distributors	1490 N. Macomb St. Monroe, Michigan	Distributor
A. A. Schramm, Manager Spoetzl Brewery	Shiner, Texas	Brewery
Richard T. Riney, President Sterling Breweries, Inc.	1301 Pennsylvania Ave. Evansville, Indiana	Brewery
Rudy Morita, President Drewyrs Limited U.S.A., Inc.	1408 Elwood Avenue South Bend, Indiana	Brewery
John L. Reuss, President Centlivre Brewing Corp.	2501 Spy Run Avenue Fort Wayne, Indiana	Brewery
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Hugh C. Beggs Tri-State Beverage Company	320 Monroe Street Evansville, Indiana	Distributor
Wallace P. Irwin Gem City Beverage Company	Frankfort, Indiana	Distributor
Cyril E. Haller, Vice President Dubois County Beverage Co., Inc.	Rural Route #3 Jasper, Indiana	Distributor
Charles W. Bilts, President Quality Beers, Inc.	1400 Canal Street Lafayette, Indiana	Distributor
Frank Callipo, Manager Dick Elliott Distributors	601 Erie Street Logansport, Indiana	Distributor
Joseph N. Stipp D & J Beverage Company	234 Kinny Street Muncie, Indiana	Distributor

Name	Address	Type
Donald J. Norris Norris Beverage Distributors	216 S. 16th Street New Castle, Indiana	Distributor
Glenn Shrum Salem Beverage Company	309 S. Water Street Salem, Indiana	Distributor
John R. Heintzelman, President United Beverage Company	125 S. Hill Street South Bend, Indiana	Distributor
George Zahrt, President Tippecanoe Beverages	Route #2 Winamac, Indiana	Distributor
C. L. Johnston, General Manager Regent Beverages, Inc.	640 E. Sixth Street Jacksonville, Florida	Distributor
Harold Brochin, President Jax Southern Liquors Company, Inc.	1087 Haines Avenue Jacksonville, Florida	Distributor
Frank L. Goetz, Jr., President M. K. Goetz Division Pearl Brewing Company	St. Joseph, Missouri	Brewery
Elton I. Greenberg, President Quality Distributors, Inc.	507 Eldora Wichita, Kansas	Distributor
Jack Ecord, Manager Shawnee Beer Sales Company	316 East Crane St. Topeka, Kansas	Distributor
Columbo Massa Massa Distributing Company	215 Commercial Alley Joplin, Missouri	Distributor
William T. Grounds Crest Motel	8600 State Wyandotte County, Kansas	Distributor
Ralph E. Spriggs, President R. E. Spriggs Company	1443 E. Fourth St. Los Angeles, Calif.	Distributor
Reed LeVecke The LeVecke Company	1807 E. Olympic Blvd. Los Angeles, Calif.	Distributor
Fred N. Bower Eastside Distributors	230 S. Olive Street Ventura, California	Distributor
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Eugene V. Kennedy Eastside Distributors	230 S. Olive Street Ventura, California	Distributor
John B. McClay, Secretary McClay Distributors, Inc.	6797 Adobe Road Twentynine Palms, California	Distributor
Herman H. Watts M & W Distributing Company	Route 1, Box 22 E. San Luis Obispo, California	Distributor
John R. Blackburne Blackburne Distributing Company	35044 Surry Court Barstow, California	Distributor
Leonard A. Tone	9048 E. Florence Downey, California	Distributor
James E. Garner c/o Garner Sales Company	521 S. Washington El Dorado, Arkansas	Distributor
Joe D. Holladay, Secretary Frank Fehr Brewing Company, Inc.	412 Fehr Avenue Louisville, Kentucky	Brewery

Name	Address	Type
Miss Lillian Madden, President Falls City Brewing Company, Inc.	3024 W. Broadway Louisville, Kentucky	Brewery
Richard Wagner, Vice President George Wiedemann Brewing Co., Inc.	601 Columbia Street Newport, Kentucky	Brewery
Joseph Vessler, Chief Accountant International Breweries, Inc.	528 W. 12th Street Covington, Kentucky	Brewery
Elmer Herron c/o Elmer Herron Distributors	Route 3 Henderson, Kentucky	Distributor
Mrs. Lillian Rhodes, Bookkeeper Elmer Herron Distributors	Route 3 Henderson, Kentucky	Distributor
Hugh P. Mindrup c/o A & M Distributing Company	1527 S. Green Street Henderson, Kentucky	Distributor
Paul E. Napstein Formerly of Napstein Brewing Co. New London, Wisconsin	18341 N.W., 39th Court Miami, Florida	Brewery
John Rickel, President H. W. Rickel & Company	1824 Adelaid Street Detroit, Michigan	Malt
George Muras, Secretary Treasurer Fountain Brewing Company	Fountain City, Wisconsin	Brewery
Thomas R. Gettelman, President Gettelman Brewing Corporation	Milwaukee, Wisconsin	Brewery
H. Newman Bills, Executive Vice President & Secretary Independent Milwaukee Brewery	2701 S. 13th Street Milwaukee, Wisconsin	Brewery
Harold Anderson, Sales Manager Kingsbury Breweries Company	901 Marshall Street Manitowoc, Wisconsin	Brewery
[fol. 80]		
Ray Meyer, President Jacob Leinenkugel Brewing Co.	1 Jefferson Avenue Chippewa Falls, Wis.	Brewery
Howard J. Ruff, General Manager Marathon City Brewing Company	Marathon, Wisconsin	Brewery
John S. Savage, Secretary & Counsel Miller Brewing Company	4000 W. State Street Milwaukee, Wisconsin	Brewery
Raymond Leder, General Manager Mineral Springs Brewing Company	Mineral Point, Wis.	Brewery
Adolph Schumacker, President Potosi Brewing Company	Potosi, Wisconsin	Brewery
John Breunig, Vice President Rice Lake Brewing Company	Rice Lake, Wisconsin	Brewery
J. D. Stepaniak, General Manager Stevens Point Beverage Companies	Stevens Point, Wis.	Brewery
George Walter, Secretary Treasurer Walter Brewing Company	Eau Claire, Wisconsin	Brewery
Francis H. Parsons, Secretary Joseph Schlitz Brewing Company	235 W. Galena St. Milwaukee, Wis.	Brewery

Name	Address	Type
Mrs. Elsie M. Wolff, President Wausau Brewing Company	Wausau, Wisconsin	Brewery
Emery N. Varney, Vice President Marshfield Brewing Company	Marshfield, Wis.	Brewery
Howard C. Hartman, President Fox Head Brewing Company	227 Maple Avenue Waukesha, Wisconsin	Brewery
Earl Lenger, Secretary Treasurer Fox Head Brewing Company	227 Maple Avenue Waukesha, Wisconsin	Brewery
John J. Berger, President Chilton Malting Company	137 E. Main Street Chilton, Wisconsin	Maltster
Paul Riebs, President The Riebs Co.	741 N. Milwaukee St. Milwaukee, Wisconsin	Maltster
Jeanette Christianson, Office Manager Northern Brewing Company, Inc.	714 N. Eighth Street Superior, Wisconsin	Brewery
Mrs. Alice Lenke, President G. Weber Brewing Company	4124 N. Prospect Milwaukee, Wisconsin	Brewery
Charles Walter, Jr., General Manager West Bend Lithia Company	459 N. Main Street West Bend, Wisconsin	Brewery
Don Huseby, Treasurer Fauerbach Brewing Company	651 Williamson Street Madison, Wisconsin	Brewery
Robert G. Kroncke, Secretary Treas. L. Rosenheimer Malt and Grain Co.	Kewaskum, Wisconsin	Maltster
George Liebich, Secretary Two Rivers Beverage Company, Inc.	1608 Adams Street Two Rivers, Wisconsin	Brewery
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Robert W. Rummele, Vice President Schrier Malting Company	704 S. 15th Street Sheboygan, Wis.	Maltster
Donald Williams	Route 4, Box 89C Beloit, Wisconsin	Distributor
Charles Holderness, Bookkeeper Blackman Trucking Company	1300 40th Street Kenosha, Wisconsin	Brewery
Merle Laverne Pederson	1009 S. 4th Street LaCrosse, Wisconsin	Distributor
Herbert F. Drout Felker Motors Company	201 W. Doege Street Marshfield, Wis.	Distributor
Mrs. Anna Koncke	1823 Cambridge Ave. Sheboygan, Wis.	Distributor
Mrs. Theresa Versay	2731 N. Eleventh St. Sheboygan, Wis.	Distributor
Harry P. Goodall	1828 Magnolia Ave. Janesville, Wis.	Distributor
John Haley	RR #2 Siren, Wisconsin	Distributor
Myron Johnson, President Cole Springs Brewing Company, Inc.	45 High Banks St. Cloud, Wisconsin	Brewery

Name	Address	Type
Robert Ostern, President Duluth Brewery and Malting Co.	Duluth, Minnesota	Brewery
John Charles Beerhalter, President Fitzgers Brewing Company	Duluth, Minnesota	Brewery
Alfred H. Fleckenstein, President Ernst Fleckenstein Brewing Co.	422 7th Street, N.W. Faribault, Minnesota	Brewery
Dale R. Johnson, Treasurer Mankato Brewing Company	427 Nicollet Avenue Mankato, Minnesota	Brewery
Charles Gluek, President Gluek Brewing Company	2000 Marshall St., N.E. Minneapolis, Minn.	Brewery
Frank Kiewel, President Minneapolis Brewing Company	1215 Marshall St., N.E. Minneapolsi, Minn.	Brewery
Roger Schmid, President John Hauenstein Brewing Company	1601 S. Jefferson St. New Ulm, Minnesota	Brewery
Alfred Marti, President August Schell Brewing Company	New Ulm, Minnesota	Brewery
William C. Figge, President Theodore Hamm Brewing Company	720 Payne Avenue St. Paul, Minnesota	Brewery
Carlus E. Walker, Vice President Peter Bub Brewery, Inc.	Sugarloaf Hill Winona, Minnesota	Brewery
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Frank N. Bauer, General Manager Dakota Malting and Brewing Co.	Bismarck, North Dakota	Maltster
D. A. Mensing, President Minnesota Malting Company	Cannon Falls, Minn.	Maltster
Dan McLaughlin, Executive Vice President Northwestern Malting and Grain Company	375 Grain Exchange Building Minneapolis, Minn.	Maltster
William E. Kreiner, III, Manager William E. Kreiner & Sons	467 Spring Street Buffalo, New York	Maltster
Charles Russell, President Russell Creamery Company	427 Front Street Brainerd, Minnesota	Distributor
Frank Fruth Fruth Beverage Company	916 Washington Brainerd, Minnesota	Distributor
Melvin E. Sundeen Saratoga Distributing Company	1002 Railroad Street Duluth, Minnesota	Distributor
Clarence Jetty Clarence Jetty Beverage Distributing Company	2126 11th Avenue, E. Hibbing, Minnesota	Distributor
Joseph L. Zbacnik Zbacnik Distributing Company	2231 Second Avenue, E. Hibbing, Minnesota	Distributor
Mrs. Carol Greszyk North Shore Jobbing Service	Grand Marais, Minn.	Jobber
Harold A. Mickus City Club Beverage Company	Prior Lake, Minnesota	Distributor

Name	Address	Type
Herbert Austin Sandstone Distributing Company	Sandstone, Minnesota	Distributor
George Van Sloun Van Sloun Distributing Company	Sauk Rapids, Minn.	Distributor
Paul B. Wallschlager Jamestown Distributing Company	415 First Avenue, S. Jamestown, North Dakota	Distributor
Mike Reck, Jr.	910 3rd Street, S.E. Jamestown, North Dakota	Distributor
David Mussafer, President Montgomery Beverage Company	Montgomery, Alabama	Distributor
Frank E. Korby Midstate Distributing Company	2237 Winona Avenue Montgomery, Alabama	Distributor
Edward McGann, President Hull Brewing Company	820 Congress Avenue New Haven, Conn.	Brewery
Louis Gerrard, President American Brewing Company	717 Bienville New Orleans, La.	Brewery
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Cyril M. Mainegra Dixie Brewing Company, Inc.	2401 Tulane Avenue New Orleans, La.	Brewery
Charles A. Bodine, President Camden County Beverage Company	Fillmore & Bulson Sts. Camden, New Jersey	Brewery
Eric Brach, Partner National Malting Company	9 Ann Street Patterson, New Jersey	Maltster
Karl Marx, Office Manager First Caramel Malting Company	71 Warren Street Patterson, New Jersey	Maltster
Bruno Paprzycki, Bookkeeper Camden County Beverage Company	Fillmore & Bulson Sts. Camden, New Jersey	Brewery
Karl W. Badenhausen, President P. Ballantine & Sons	57 Freeman Street Newark, New Jersey	Brewery
John E. Farrell, Vice President P. Ballantine & Sons	57 Freeman Street Newark, New Jersey	Brewery
Bernard Lavin, Comptroller G. Krueger Brewing Company	75 Belmont Avenue Newark, New Jersey	Brewery
Sidney Frankel, President Standard Corporation	1313 Baltic Avenue Atlantic City, N. J.	Distributor
Frederick Otto, Branch Manager Fitzgerald Brothers Brewing Company	Kingston, New York	Distributor
Henry J. Muessen, President Piel Brothers Brewing Company	315 Liberty Avenue Brooklyn, New York	Brewery
Kenneth P. Steinreich, President Jacob Ruppert	1639 Third Avenue New York, New York	Brewery

Name	Address	Type
Benjamin Hertzberg	16 West 46th Street New York, New York	
President of:		
Metropolis Brewery of New Jersey, Inc.	1024 Lamberton St. Trenton, New Jersey	Brewery
Century Brewing Corporation	710 Washington Avenue Norfolk, Virginia	Brewery
Hornell Brewing Company, Inc.	1–13 Franklin St. Hornell, New York	Brewery
Vice Preisdent of:		
Best Brewing Corp.	1317 Fletcher Chicago, Illinois	Brewery
Spearman Brewing Company	Barrancas Ave. & I St. Pensacola, Florida	Brewery
Mandel R. Weiss, Chief Executive Officer Liebmann Breweries, Inc.	36 Forrest Street Brooklyn, New York	Brewery
Stephen Lang, Esq., Attorney Liebmann Breweries, Inc.	36 Forrest Street Brooklyn, New York	Brewery
Alvin E. Heutchy, Secretary and General Attorney F and M Schaefer Brewing Co.	430 Kent Avenue Brooklyn, New York	Brewery
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Jacob Manowitz, Owner Monticello Beverage Company, Inc.	60 Broadway Monticello, New York	Distributor
T. F. Manning, Office Manager Century Brewing Company	710 Washington Ave. Norfolk, Virginia	Brewery
George A. Coury, Manager Dominion Beverage Company of Norfolk	420 W. 23rd Street Norfolk, Virginia	Distributor
Arnold Caitham, President Star Brewing Company	E. Fourth Street Dubuque, Iowa	Brewery
Adolph G. Storz, President Storz Brewing Company	1807 N. 16th Street Omaha, Nebraska	Brewery
Raymond Patrick Wright Wright Beverage Co.	2317 Queen Street Dubuque, Iowa	Distributor
Mrs. Nadine Kahler City Club Distributing Co.	411 Steuben Street Sioux City, Iowa	Distributor
Edgar E. Hatten Hatten Beverage Co.	Spencer, Iowa	Distributor
Edward O. Stapela S & M Distributing Co.	641 Transit Street Waterloo, Iowa	Distributor
William J. Bernstorf, Partner B & B Beverage Company	47—25th Avenue, N. Clinton, Iowa	Distributor
Gilbert L. Baker, Partner B & B Beverage Company	47—25th Avenue, N. Clinton, Iowa	Distributor

Name	Address	Type
Mrs. Ellen M. Meyer Meyer Distributing Company	1231 W. 4½ Street Davenport, Iowa	Distributor
James Swats, Vice President Lion Incorporated Brewery	700 N. Pennsylvania Ave. Wilkes Barre, Pa.	Brewery
Walter Troutman, General Manager Bartels Brewing Company	Plymouth Street Edwardsville, Pa.	Brewery
J. Oliver Schmidt, Jr., Vice Pres. Fuhrmann & Schmidt Brewing Company	235 S. Harrison St. Shamokin, Pa.	Brewery
Arthur Hauer, Secretary Old Reading Brewery, Inc.	9th & Laurel Sts. Reading, Pa.	Brewery
Elmo Messer, Brewmesser Old Reading Brewery, Inc.	9th & Laurel Sts. Reading, Pa.	Brewery
Benjamin Cohn, Sales Manager Old Reading Brewery, Inc.	9th & Laurel Sts. Reading, Pa.	Brewery
Fred Maier, President Stegmaier Brewing Company	152 E. Market St. Wilkes Barre, Pa.	Brewery
Fred B. Franks, President Horlacher Brewing Company	311 Gordon Street Allentown, Pa.	Brewery
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Joseph Al Paulosky, President Columbia Brewing Company	101 S. Ferguson St. Shenandoah, Pa.	Brewery
Richard L. Yuengling, Vice President D. G. Yuengling & Son, Inc.	5th & Mahantongo Sts. Pottsville, Pa.	Brewery
Robert O. Davidson, Secretary and Manager Mt. Carbon Brewery	716 South Centre St. Pottsville, Pa.	Brewery
John B. Lieberman, President Charles D. Kaier Company, Inc.	67 North Main St. Mahanoy City, Pa.	Brewery
Nathaniel F. Cooper, President Sunshine Brewing Company	Reading, Pa.	Brewery
Robert M. Brown, Vice President Esslinger's Inc.	10th & Callowhill St. Philadelphia, Pa.	Brewery
Miss Grace McEnerney, Secretary to the President C. Schmidt & Sons, Inc.	127 Edward Street Philadelphia, Pa.	Brewery
Henry Perot, President Perot Malting Company	123 S. Broad Street Philadelphia, Pa.	Maltster
Dalzell F. Hartman Miller & Hartman Wholesale Grocers	243 W. Lemon Street Lancaster, Pa.	Distributor
Herbert J. Lindner, President Arizona Brewing Company, Inc.	150 South 12th St. Phoenix, Arizona	Brewery
Charles J. Minning, General Mgr. Arizona Distributing Company	2929 Grand Avenue Phoenix, Arizona	Distributor
G. J. Biesinger, President Altoona Brewing Company	Altoona, Pa.	Brewery

Name	Address	Type
Regis J. Maloney, President Du Bois Brewing Company	Du Bois, Pa.	Brewery
J. Martin Magenau, Jr., Secretary Erie Brewing Company	22nd & State Street Erie, Pennsylvania	Brewery
James B. Tito, President Latrobe Brewing Company	119 Ligonier Street Latrobe, Pa.	Brewery
Paul W. Koenig, Vice President Duquesne Brewing Company of Pittsburgh	South 22nd & Mary Sts. Pittsburgh, Pa.	Brewery
Sylvester E. Cowell Pittsburgh Brewing Company	3340 Liberty Avenue Pittsburgh, Pa.	Brewery
Carl Straub, Secretary Treasurer Straub Brewery, Inc.	303 Sorg Street St. Mary's Pa.	Brewery
William B. Jones, Jr., Chairman of the Board Jones Brewing Company	Second Street Smithton, Pa.	Brewery
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Donald E. Larrick, Asst. Manager Beckley Ice & Feed Company	405 Prince Street Beckley, W. Va.	Distributor
Morris Hershman King-Golumb Distributing Company	2741 Liberty Ave. Pittsburgh, Pa.	Distributor
Fred J. Dangelo Brentwood Distributing Company	201 De Walt Street Brentwood, Pittsburgh, Pennsylvania	Distributor
Frank Petrovich Pleasant Hills Distributing Company	815 Streets Run Road Pleasant Hills, Pittsburgh, Pa.	Distributor
Dave Zapchar, Manager Pleasant Hills Distributing Company	815 Streets Run Road Pleasant Hills, Pittsburgh, Pa.	Distributor
Peter Merlo Duquesne Beer Distributing Company	1215 Maple Avenue Indiana, Pennsylvania	Distributor
James B. Connolly	206 Pennsylvania Avenue, East Warren, Pennsylvania	Distributor
Casto Dixon Soda & Mineral Water Co.	918—4th Avenue Warren, Pennsylvania	Distributor
Fred G. Wessinger, Vice President Blitz-Weinhard Company	1133 W. Burnside St. Portland, Oregon	Brewery
Frederick Sitterding, III Home Brewing Company	1125 W. Clay Street Richmond, Virginia	Brewery
J. Robert Evans Evans Distributing Company	Groseclose, Virginia	Distributor
Shelby Addington Quality Distributing Company	Norton, Virginia	Distributor

Name	Address	Type
Mark T. Custer, Manager Valley Forge Distributing Company	1342—8th St., S.W. Roanoke, Virginia	Distributor
Clyde Dalton, Sales Manager Lawrence Distributing Company	Danville, Virginia	Distributor
Rudolph J. Cheatwood S & L Straus Beverage Company	1707 Summit Avenue Richmond, Virginia	Distributor
Mrs. Mary Wilmes, Secretary Fischback Brewing Company	300 Water Street St. Charles, Mo.	Brewery
Harvey Beffa, Sr., Executive Vice President Falstaff Brewing Corporation	5050 Oakland Avenue St. Louis, Missouri	Brewery
Richard A. Meyer, Vice President Anheuser-Busch, Incorporated	721 Pestalozzi Street St. Louis, Missouri	Brewery
Dwight Ingamells, General Counsel Anheuser-Busch, Incorporated	721 Pestalozzi Street St. Louis, Missouri	Brewery
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Harold W. Locke, President Locke Distributing Company	131 S. Main Street Cape Girardeau, Mo.	Distributor
Joda Bess Bluff City Beer and Produce Company	541 Henderson St. Poplar Bluff, No.	Distributor
Francis H. McDowell McDowell Distributing Company	500 Bridge Street Hannibal, Missouri	Distributor
Robert L. Becker, President Becker Products Company	1900 Lincoln Avenue Ogden, Utah	Brewery
Leslie S. Breckon	3741 Forrest-Hills Dr. Salt Lake City, Utah	Distributor
Vincent Vre Non	107 University Terrace Reno, Nevada	Distributor
Robert Smith, Executive Secretary Wholesale Beer Distributors of Texas, Inc.	Austin, Texas	Distributor
Edwin F. Hermanutz, Manager Valley Brewing Company	1501 Hidalgo Street Mercedes, Texas	Brewery
Charles A. Kuper, Vice President Lone Star Brewing Company	542 Simpson Street San Antonio, Texas	Brewery
Albert J. Range, Vice President Pearl Brewing Company	312 Pearl Parkway San Antonio, Texas	Brewery
Henry E. Picard, President Burgermeister Brewing Corporation	470 Tenth Street San Francisco, Calif.	Brewery
Leo T. Englert, Executive Vice President Regal Palo Brewing Company	3250—20th Street San Francisco, Calif.	Brewery
Leon J. Loupy, Administrative Asst. Lucky Lager Brewing Company	2601 Newhall Street San Francisco, Calif.	Brewery
Tom Grace, President Grace Brothers Brewery	203 Second Street Santa Rosa, Calif.	Brewery

Name	Address	Type
John Green, Office Manager Bauer-Schweitzer Malting Company	530 Chestnut Street San Francisco, Calif.	Malt
W. Burleigh Pattee, Attorney	111 Sutter Street San Francisco, Calif.	Malt
Joseph J. Gillis, Vice President Acme Distributing Company	1804 Laurel Street Columbia, S. Car.	Distributor
William C. Fleetwood, Owner B & B Distributing Company	216 East Bay Street Savannah, Georgia	Distributor
William P. Summer, Sr. Summer Beverage Company	810 Gervais Street Columbia, S. Car.	Distributor
Thomas G. Strange Southern Wholesale Distributing Co.	Columbus, Georgia	Distributor
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Charles A. Coatney, Controller Great Western Malting Company	Longview, Washington	Malt
S. H. Perkins, Secretary Sicks Rainier Brewing Company	3100 Airport Way Seattle, Washington	Brewery
Thomas H. Regan, Secretary Silver Springs Brewing Company	105 East 26th Street Tacoma, Washington	Brewery
Adolph D. Schmidt, Jr., President Olympia Brewing Company	Tumwater, Washington	Brewery
Hamilton M. Jones, Manager Bohemian Breweries, Division of Atlantic Brewing Company	1402 W. Second Ave. Spokane, Washington	Brewery
Irving Levine K & L Beverage Company	4660 E. Marginal Way Seattle, Washington	Distributor
Wayne Tawlks Puget Sound Distributors	2805 Sixth Avenue Bremerton, Washington	Distributor
Stan Lavine, Vice President K & L Beverage Company	4660 E. Marginal Way Seattle, Washington	Distributor
P. Robert Sevenich Northwest Distributing Company	3430 Sixteenth St. Everett, Washington	Distributor
Howard Bargreen Northwest Distributing Company	2821 Rucker Avenue Everett, Washington	Distributor
Joey August Joey August Distributors	East 840 Trent Ave. Spokane, Washington	Distributor
Walter Reisch, General Manager Reisch Brewing Company	723 N. Rutledge St. Springfield, Illinois	Brewery
Harold Paar, Vice President Warsaw Brewing Company	Warsaw, Illinois	Brewery
W. F. McHenry W. F. McHenry & Co.	900 E. Adams Street Springfield, Illinois	Distributor
Charles Lechner Lechner Distributing Company	Mt. Carmel, Illinois	Distributor
Mendal Kelly K & T Distributors	Mt. Carmel, Illinois	Distributor

Name	Address	Type
Fred Terrell	116 Adriatic Tampa, Florida	Brewery
Jack Peppers L & L Distributors	5th Ave. & 13th St. Tampa, Florida	Brewery & Distributor
C. Buford Price	1223 Woldland Ave. Lakeland, Florida	Brewery
Mrs. Olivia P. Fair	410 Blanca Avenue Tampa, Florida	Distributor
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John J. Renaud, Jr., President Associated Distributors, Inc.	204½ N. New York Ave. Lakeland, Florida	Distributor
Pierce J. Harvey	205 Morgan Street Tampa, Florida	Distributor
Louis Figueredo	2202 North Boulevard Tampa, Florida	Distributor
Charles M. Pascal, President Pascal, Inc.	3000 V Street, N.E. Washington, D. C.	Distributor
Mary Chamberlain, Secretary to the President International Breweries, Inc.	1600 Fisher Building Detroit, Michigan	Brewery
Harold Peterson, Chief of Police	Menominee, Michigan	Brewery
A. W. Ecton	Smithville, Missouri	Brewery
Frank J. McGinley, Jr. Tri-A Beverage and Sales Company	419 Wyandotte Kansas City, Mo.	Distributor
Max J. Kolck, Jr., Vice President Great Western Malting Company	5945 S. Malt Avenue Los Angeles, Calif.	Malt
Charles Harkins, Assistant Secretary Genesee Brewing Company, Inc.	100 National Street Rochester, New York	Brewery
Maurice L. Lewis, President Standard Rochester Brewing Company, Inc.	770 Emerson Street Rochester, New York	Brewery
Earl W. Harrison, Vice President International Breweries, Inc.	194–262 Pratt St. Buffalo, New York	Brewery
T. F Manning, Office Manager Century Brewing Company	710 Washington Ave. Norfolk, Virginia	Brewery
A. J. Hausch, Local Manager The Burger Brewing Company	529 Grant Street Akron, Ohio	Brewery
Bert McGowan, General Manager Utah Branch, Lucky Lager Brewing Co.	Salt Lake City, Utah	Brewery
R. G. Kolocheski, President Oconto Brewing Company, Inc.	1017 Superior Street Oconto, Wisconsin	Brewery
Thomas McConnell, III, Executive Vice President C. Schmidt & Sons, Inc.	127 Edward Street Philadelphia, Pa.	Brewery

Name	Address	Type
Dan McLaughlin, Secretary Kruner Malting Company	375 Grain Exchange Minneapolis, Minn.	Malt
Red Wing Malting Co.	Red Wing, Minnesota	Malt
George H. Bussmann, Vice President Hull Brewing Company	820 Congress Avenue New Haven, Conn.	Brewery
John Kuhn, Controller Liebmann Breweries, Inc.	119 Hill Street Orange, New Jersey	Brewery

[fol. 90] 2. *Factual Description of the Nature of the Testimony of:*

(a) *Distributor Witnesses*

Jack Sobel, d/b/a
Beverage Distributing Company of
Maryland Inc., 2600 Pennsylvania Ave.
Baltimore, Maryland

Sobel distributed Blatz beer from 1956 to September 18, 1958. Shortly after the merger he lost Blatz to the Pabst distributor, the Terminal Distributing Company. He was not offered the opportunity to distribute both brands. He did not replace Blatz with any other brand. He was unable to obtain any nationally advertised brands as a substitute for Blatz. The Pabst representative with whom he dealt was George Lenz.

James H. Hall
Hall Distributing Company
3 Warehouse Drive
Salisbury, North Carolina

Prior to the merger, he was, from 1947 to 1959, divisional manager for Blatz beer. He dealt with wholesalers as a brewery representative. After the merger, the company policy was to get both Blatz and Pabst wholesalers under one roof. The policy was to get a wholesaler who had one brand to merge voluntarily with the wholesaler who had the other brand. It was the "management" who made the decision as to which company would lose a line if the merger could not be effected.

Auttie Talmage Harris
Harris Distributing Co.
522 Foster Street
Durham, North Carolina

He distributed Blatz beer from December 1957 to January 1959, when he lost Blatz to the Carolina Distributing Company. He was unable to obtain any replacement for Blatz. He attempted to obtain distributorship of Carling's and Falstaff's brands of beer without success. The Blatz representative with whom he dealt was James H. Hall.

[fol. 91] John A. Baynes, Jr.
3021 Park Avenue
Wilmington, North Carolina

He formerly did business as Eastern Distributing Company and distributed Blatz beer. In the summer of 1959 he lost Blatz to Hanks Distributing Company. This forced him to go out of business. He was unable to obtain the distributorship of any other beer. The Blatz representative with whom he dealt was George Griffin.

William D. Philbeck
Highland Distributing Co.
Glidden Street
Fayetteville, North Carolina

His company distributed Blatz from 1947 until February 1959 when it lost that brand to the Southern Distributing Company, which thereafter handled both brands. He was unable to obtain any replacement for Blatz.

Phillip Castagna
6340 West Fletcher Street
Chicago, Illinois

He is an employee of Pabst at the present time. Prior to the merger he was a Blatz distributor; he was informed by Phillip Clancy after the merger that his distributorship was being cancelled. However, he was offered a choice of a job as salesman for a smaller territory and accepted the job as salesman.

Carl H. Arens
1350 North Astor Street
Chicago, Illinois

Arens was formerly vice president of Beacons Distributors, Inc., 6000 South Perry, Chicago, Illinois, and distributed Blatz beer. His distributorship was cancelled without notice in September 1958. He made no attempt to obtain a replacement. The Blatz representative with whom he dealt was R. B. Bunino.

William T. Middleton
312 Broadway
Sterling, Illinois

He was formerly a Pabst distributor and was cancelled after the merger, by registered letter. He did not attempt to secure a replacement for Pabst.

[fol. 92] Geno Castagnoli
c/o Solano Distributing Company
22 Brancifort Street
Vallejo, California

He formerly distributed Blatz beer but was cancelled after the merger. The Pabst representative with whom he dealt was named McNamara. He was unable to obtain any premium beer.

Dewey Johnson
c/o Lancaster Bottling Works
305 Union Street
Lancaster, Ohio

He formerly was a Pabst distributor but was terminated subsequent to the merger. He has been unable to obtain a replacement since all premium beers in the area are sold by other distributors. The Pabst employee who contacted him was A. W. Lesperance.

Oscar F. Schmidt
Peerless Transportation Company
214 South Perry Street
Dayton, Ohio

He was terminated as a Pabst distributor in January 1959. He is not distributing any beer at the present time because all distributorships are taken. He complained to Rocco Bunino.

Marcus Hoffard
4562 Daybrook Drive
Bay City, Michigan

Formerly Pabst distributor and was terminated after merger. He was unable to obtain a satisfactory replacement but did pick up P.O.C. brand which was an unsatisfactory replacement. He attempted to get Budweiser and Schlitz without success. He dealt with Harvey La Rose, a Pabst representative. He also contacted Edward Kaloff of Pabst.

Thomas Evans
Evans Beverage Company
902 West Main Street
Owosso, Michigan

He was formerly a Pabst distributor and was terminated after the merger. He has been unable to obtain an adequate replacement although he tried to obtain Hamm's. The Pabst representatives with whom he dealt were Edward Kaloff and Ralph Gregory.

[fol. 93] Charles Lee
Alpena Beer Distributing Company
2193 State Street
Alpena, Michigan

Distributed Pabst beer until May 1, 1958, when he was terminated. Has been unable to obtain a satisfactory replacement, although he has obtained Miller's and Altes which do not compare with Pabst. Attempted to get Budweiser without success. The Pabst representatives with whom he dealt were Gregory Slagenbourgh and one other name unknown.

Edwin Wunderlin, Vice President
A. W. Walsh Company
2640 Dickman Road
Battle Creek, Michigan

Formerly distributed Pabst beer but was terminated after the merger. He has been unable to secure an adequate replacement for Pabst. The Pabst representatives with whom he dealt were Ralph Gregory and Gordon Skaar.

Don L. Gamache
487 Bryant Street
Mainstee, Michigan

Formerly was a Pabst distributor, but was terminated since the merger; was unable to obtain a premium beer for one and a half years, but obtained Miller's in October of 1960.

Anthony Diamante
Diamante Distributing Company
917 Chilson Street
Lansing, Michigan

Formerly distributed Pabst beer and was terminated after the merger. From October 1958 until April 1959, he could obtain no type of large selling beer to distribute but in April of 1959 he became a distributor of Goebel beer. He attempted, without success, to obtain Falstaff beer. The Pabst representatives who contacted him were Ralph Gregory and Mr. Kalloff.

Milton L. Hutchens
1981 Whitcomb Street
Gary, Indiana

He was formerly president of South Park Distributors, 4846 South Wentworth Avenue, Chicago, Illinois, which distributed Blatz beer. The distributorship was cancelled in September 1959. He was not able to obtain an adequate [fol. 94] replacement for Blatz, although he tried both Hamm's and Braumeister. As a result, he was forced to go out of business.

George W. Betz
Betz Distributing Company
Beloit, Wisconsin *

Betz formerly distributed both Pabst and Rhinelander, a competing beer. In late 1959, Betz dropped Rhinelander and took on Blatz. He gave up Rhinelander at the request of Pabst.

Everett Bartoletti
119—3rd Street, South
Virginia, Minnesota

Formerly distributed Blatz beer but was terminated subsequent to the merger. Although he now sells Schmidt's and Pfeiffer's brands, he has been unable to secure an adequate replacement for Blatz. The representative of Blatz with whom he dealt was a Mr. Gantenbein. He also had conversations with Messrs. Augustine and Martin from the Pabst Company.

Fred E. Moseley
2137 East 5th Street
Montgomery, Alabama

He formerly distributed Blatz beer and was terminated after the merger. He thereupon went out of business. He attempted to obtain Hamm's beer without success. The Blatz representative with whom he dealt was Jim Handley.

William Seeley
Fitzgerald Brothers Brewing Company
116 Smith Avenue
Kingston, New York

His company formerly distributed Blatz beer and was terminated subsequent to the merger. He has been unable to obtain any replacement.

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* In the plaintiff's response to the pre-trial order, his address was inadvertently listed as Berlin, Wisconsin.

Charles S. Withrow
124 Dogwood Drive
Newport News, Virginia

He is manager of the Stebbins Distributing Company. He formerly distributed Blatz beer and was terminated in 1958. The Pabst representative with whom he dealt was Eric Edstrand.

[fol. 95] Richard B. Hoeksema, Manager
Meyer Distributing Company
1231 West 4½ Street
Davenport, Iowa

Formerly distributed Blatz beer but has been terminated since the merger. He has been unable to obtain a replacement for Blatz since there is no other brand available for distribution.

(b) *Brewer Witnesses*

Paul Kalmanovitz, President
Maier Brewing Co.
500 East Commercial Street
Los Angeles 12, California

The company has lost sales since the merger because of Pabst advertising of Blatz beer.

Edmund B. Koller, President
The Walter Brewing Co.
Hickory and Le Crosse Street
Pueblo, Colorado

The brewery's distribution of beer in South Carolina has been affected since the merger because of the loss of their South Carolina distributor and because Pabst has lowered its price in South Carolina.

Tyrus R. Jones, Vice President
Atlantic Brewing Co.
1549 Fullerton Avenue
Chicago, Illinois

The company's sales have been affected by Pabst selling its beer in cans and "throw-aways" at local prices in the South and the East.

George J. Holas, President
Pilsen Brewing Co.
3043-3065 West 26th Street
Chicago, Illinois

The company lost one of its Michigan distributors as a result of the merger.

J. Miner Culp, President
Oertel Brewing Co.
1400 Story Avenue
Louisville, Kentucky

Their sales have declined since the merger due in part to the combined advertising of Pabst. Mergers in the beer industry are harming small and medium-sized breweries.

[fol. 96] John G. Hoyer, Vice President
Frank Fehr Brewing Co., Inc.
412 Fehr Avenue
Louisville, Kentucky

Their sales have been adversely affected by the combined advertising of Pabst since the merger. If the merger movement continues, in a short while there will be only about twenty breweries left.

Richard C. Jones, Executive Officer
Jackson Brewing Co.
620 Decatur
New Orleans, Louisiana

The brewery lost an Alabama distributor because of the merger.

R. Leiter Fitzsimons, President
American Brewery, Inc.
1700 North Gay Street
Baltimore, Maryland

The company sales have been affected by reductions in Pabst prices in their area since the merger.

Robert A. Schiffer, Vice President
Goebel Brewing Co.
2001 Rivard
Detroit, Michigan

The brewery is down 48 per cent in sales, in part the result of the combined advertising of Pabst and Blatz.

Joe Petz, Sales Manager
International Breweries, Inc.
1600 Fisher Building
Detroit, Michigan

They have lost distributors in Michigan and have suffered a decline in sales in that area due to the merger.

Elmo H. Bevington, President
Metz Brewing Co.
210 Hickory Street
Omaha, Nebraska

Their sales have suffered because of reduction in prices by Blatz since the merger.

Thomas J. Fatato, Secretary and Sales Manager
Eastern Brewing Corporation
334 North Washington Street
Hammonton, New Jersey

The brewery has lost distributors because of the merger.

[fol. 97] Bruce Berckmans, President
International Breweries, Inc.
1600 Fisher Building
Detroit, Michigan

The company has been adversely affected by loss of distributors and decline in sales. Pabst distributors emphasize the sale of Pabst and Blatz beer and slight the sales of his beer.

Herbert Epstein, President
Pfeiffer Brewing Co.
3740 Bellevue
Detroit, Michigan

This brewery has suffered a decline in sales in Michigan due to the tremendous increase in the sale of Blatz since the merger.

Paul A. White, Administrative Assistant
The Pilsener Brewing Co.
6605 Clark Avenue
Cleveland, Ohio

The brewery has lost sales sales since the merger because of increased Blatz sales.

Philip F. Neuweiler, President
Louis F. Neuweiler's Sons Brewers
401 North Front Street
Allentown, Pennsylvania

They have suffered a loss of sales caused in part by combined national advertising of Pabst and Blatz.

Edward Fitzgerald, Treasurer
Fitzgerald Bros. Brewing Co.
498 River Street
Troy, New York

The Company has lost its distribution of Blatz as a result of the merger. Its brewery has declined in sales due in part to combined Pabst and Blatz advertising and reduction in price of Pabst beer.

James M. Mead, Treasurer
Fred Koch Brewery, Inc.
15-25 West Courtney Street
Dunkirk, New York

This merger and similar brewery mergers are ruining small and medium-sized brewers.

[fol. 98] Marvin Bilnsky, President
Cleveland Sandusky Brewing Corp.
2764 East 55th Street
Cleveland, Ohio

The company has lost distributors as a result of the merger. Eventually there will be no separate Pabst and Blatz distributors, with the result that it will be difficult to find any distributor who will be willing to handle the brands of beer manufactured by small and medium-sized brewers.

B. P. Bohannon, Chairman of Board
Standard Brewing Co.
5801 Train Avenue
Cleveland, Ohio

The company has lost sales since the merger due in part to the combined advertising of Pabst and Blatz beer.

James Amento, President
August Wagner Breweries, Inc.
605 South Front Street
Columbus, Ohio

The company has lost sales in Ohio since the merger because of a tremendous increase in sales of Pabst and Blatz beer.

Joseph V. Burns, President
Eagle Brewing Co.
2nd and Mulberry Streets
Catasauqua, Pennsylvania

The brewery has lost sales since the merger due, in part, to the combined advertising of Pabst-Blatz beer.

Joseph T. Ortlieb, President
Henry F. Ortlieb Brewing Co.
American and Poplar Streets
Philadelphia, Pennsylvania

They will be affected if Pabst cuts its prices in their territory. This merger and other brewery mergers are ruining the business of small and medium-sized breweries.

S. C. Berg, Accountant
Gulf Brewing Co.
5301 Polk Avenue
Houston, Texas

This brewery has had a decline in sales due, in part, to the reduction in prices by Pabst since the merger.

[fol. 99] J. M. Delmar, Vice President
Gulf Brewing Co.
5301 Polk Avenue
Houston, Texas

This brewery is unable to compete with the large national brewers, such as Pabst, which have, since the merger, engaged in concentrated national advertising.

J. F. Fesenmeier, President
Fesenmeier Brewing Co.
1401 Madison Avenue
Huntington, West Virginia

As a result of the merger distributors selling their beer, who also handle Pabst, have added Blatz, and by this have reduced the volume of sales of their beer.

Frank Sitterding II, President
Home Brewing Co.
1125 West Clay Street
Richmond, Virginia

The brewery lost Virginia distributors because of the merger.

Patrick J. Curran, President
Berlin Brewing Co.
277-283 Broadway
Berlin, Wisconsin

Their sales have been affected by the weight of the combined Pabst-Blatz advertising. He fears a serious decline in sales if Blatz prices are cut to local level.

Fred Effinger, President
Effinger Brewing Co.
Baraboo, Wisconsin

They will be ruined if Pabst ever cuts the Blatz price to local level or consolidates its distributors.

Clarence Rothe, Office Manager
Rahr Green Bay Brewing Co.
1331 Main Street
Green Bay, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level.

Fred W. Huber, Treasurer and Sales Manager
Huber Brewing Co.
1208—14th Avenue
Monroe, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level.

[fol. 100] Lorenz Kunzl, Treasurer
Oshkosh Brewing Co.
1642 Doty Street
Oshkosh, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level. They are losing sales because of the Pabst-Blatz combined advertising.

Richard F. Haidlinger, President
Peoples Brewing Co.
1506 South Main Street
Oshkosh, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level. They are losing sales because of the Pabst-Blatz combined advertising.

Roland J. Marx, Secretary
George Walter Brewing Co.
200 South Walnut Street
Appleton, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level.

Harold B. Bloomquist, President
Rhinelander Brewing Co.
Rhinelander, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level. The brewery has lost distributors because of the merger. There has also been a decline in sales caused, in part, by combined Pabst-Blatz advertising.

David Strother, Director of Central Sales
Joseph Schlitz Brewing Co.
Milwaukee, Wisconsin

The brewery is losing sales to Pabst in Wisconsin as it increases its lead in sales over other brands. Pabst is making gains over them in draft beer business.

Henry Dheim, Jr., Vice President
West Bend Lithia Co.
West Bend, Wisconsin

Not interviewed by the Federal Bureau of Investigation.

[fol. 101] Roy E. Kumm, President
G. Heileman Brewing Co.
915 South 3rd Street
LaCrosse, Wisconsin

The brewery would be ruined if Pabst ever reduced the Blatz price to a local level. He fears that if Blatz price is cut to local level, it will ruin all the small Wisconsin brewers. Pabst's sales position in Wisconsin has been enhanced by the merger.

Edmund C. Bloedorn, Sales Manager
Fox Head Brewing Co.
Waukesha, Wisconsin

The brewery has lost distributors as a result of the merger and draft beer accounts.

(c) *Maltster Witnesses*

The Government supplements the description of the testimony submitted for the malt company witnesses by reference to the dollar amount of business these companies lost as a result of the Pabst-Blatz merger as shown by the defendant Pabst in its answer to plaintiff's interrogatory No. 28.

In addition, the Government also wishes to add the name of an additional maltster witness, Stanley Williams, President, Wisconsin Malting Company, 229 East Wisconsin Avenue, Milwaukee, Wisconsin, who was also affected in the same way as the other previously named maltster witnesses. The dollar volume of sales which his company lost as a result of the Pabst-Blatz merger is also found in the defendant's answer to Government's Interrogatory No. 28.

The Government states that the distributor, brewery, and maltster witnesses will produce at trial under subpoena such documents as they have showing productions and sales of beer or malt and that in addition the distributor witnesses will produce at trial under subpoena the names and addresses of their customers.

The Government submits that pursuant to the last paragraph of "Plaintiff's Response to Pre-Trial Order," filed September 15, 1961, it will offer at trial data and information furnished by defendent Pabst in its response to plaintiff's letter of August 24, 1961.

[fol. 102] The Government responds to paragraph 2 of the Order of November 22, 1961 by specifying the following:

Brewers Almanac for 1960

Tables 1, 3, 4, 5, 6, 8, 9, 12, 39, 41, 42, and 64.

Modern Brewery Age—Blue Book Issue, 1961

Digest of State Labeling Requirements on Fermented Malt Beverages (Pages 35, 36, 38, 39, and 40).

Advertising Laws and Regulations Pertaining to Fermented Malt Beverages (Pages 41, 43, 44, 45, 46, 48, 49, 52, 53, 54, 56, 58, 59, 60, 62, 63, and 64).

Credit Regulations (Pages 65, 66, and 67).

Limitation of Container Sizes (Pages 68, 69, and 70).

Permissible Alcoholic Content for Fermented Malt Beverages (Pages 70 and 71).

State Beer Tax Rates (Pages 71, 72, 73, and 74).

Shipping Requirements Affecting Brewers (Pages 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84).

Alphabetical List of United States Breweries (Pages 13, 16, and 17).

Beer Brands in Use (Pages 25, 26, 29, 30, and 32).

/s/Earl A. Jinkinson. /s/ Bertram M. Long. /s/ Francis C. Hoyt. /s/ Dorothy M. Hunt. Attorneys, Department of Justice, Room 404, United States Courthouse, Chicago 4, Illinois, WEbster 9-2395

[fol. 103] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C-215

[Title omitted]

ORDER FOLLOWING PRE-TRIAL CONFERENCE—
January 18, 1962

The parties having appeared by their respective counsel at a pretrial conference in the above matter, held pursuant to notice, on January 15, 1962, and said counsel having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following stipulations unless modified by the court to prevent manifest injustices;

1. In Paragraph 4 of the court's order of November 22, 1961, it was stated that the line of commerce allegedly affected by the merger involved herein is the beer industry. The plaintiff agrees that "beer industry" as used in that section, is limited to the production, sale and distribution of all types of beer, and does not include the production, sale or distribution of the ingredients of beer. The plaintiff will contend at the trial, however, that evidence as to the effect of the merger on the malt industry is relevant.

2. In the last paragraph of Paragraph 1 of the court's order of November 22, 1961, it was provided that the plaintiff would describe the records which it would introduce in evidence to support the testimony of the witnesses to be called by it at the trial. In partial response thereto, the plaintiff stated that the distributor, brewery and maltster [fol. 104] witnesses will produce at trial under subpoena such documents as they have showing productions and sales of beer or malt and that the distributor witnesses will produce at trial under subpoena the names and addresses of their customers. It is the intention of the defendant, Pabst Brewing Company, to move for issuance of subpoenaes prior to trial in order to enable it to inspect the documents which will be produced at the trial by the distributor, brew-

ery and maltster witnesses. Such motion and a brief in support thereof will be filed not later than January 29, 1962. Answering briefs will be filed not later than February 12, 1962.

Dated, Milwaukee, Wisconsin, this 18th day of January, 1962.

Robert E. Tehan, U. S. District Judge.

[fol. 105] Notice and Proof of Service omitted in printing

[fol. 106] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

MOTION FOR ORDER AUTHORIZING ISSUANCE OF SUBPOENAS—
Filed January 29, 1962

Now comes the defendant, Pabst Brewing Company, by its attorneys, and moves the court for the entry of an order pursuant to Section 13 of the Clayton Act, 15 U. S. C. A., § 23 and Rule 45(e) of the Federal Rules of Civil Procedure authorizing the Clerk of the United States District Court, Eastern District of Wisconsin, to issue subpoenas duces tecum to each of the witnesses named in the Plaintiff's Response to Pre-Trial Order filed herein September 15, 1961, and Plaintiff's Further Response to Pre-Trial Order filed herein January 10, 1962, directing such witnesses to produce for examination and inspection by the attorneys for the defendant at the offices of the Clerk of said District all documents which such witnesses may have showing production and sales of beer or malt, and in addition that the distributor witnesses set forth in said responses also produce such documents as they may have showing names and addresses of their customers.

Defendant's memorandum in support hereof is attached hereto.

Dated: January 29, 1962.

Pabst Brewing Company by Ray T. McCann, 152 West Wisconsin Avenue, Milwaukee 3, Wisconsin. [fol. 107] John T. Chadwell, 135 South LaSalle Street, Chicago 3, Illinois. Glenn W. McGee, 135 South LaSalle Street, Chicago 3, Illinois.

Snyder, Chadwell, Keck, Kayser & Ruggles, 135 South LaSalle Street, Chicago 3, Illinois, RAndolph 6-2545.
Ray T. McCann, 152 West Wisconsin Avenue, Milwaukee 3, Wisconsin, BR 6-3535, of Counsel.

[fol. 108] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

AGREED ORDER AUTHORIZING ISSUANCE OF SUBPOENAS—April 4, 1962

Pursuant to the stipulation of the parties by their respective attorneys and upon proper application and cause shown,

It Is Hereby Ordered that the Clerk of the United States District Court, Eastern District of Wisconsin, shall upon request of the attorney for defendant, Pabst Brewing Company, issue subpoenas duces tecum for service in any judicial district of the United States upon each of the witnesses named in the Plaintiff's Response to Pre-Trial Order filed herein September 15, 1961, and Plaintiff's Further Response to Pre-Trial Order filed herein January 10, 1962, directing such witnesses to produce for examination, inspection and copying by the attorneys for the parties at the offices of the Clerk of said District all documents which such wit-

nesses may have showing production and sales of beer or malt, and in addition, that the distributor witnesses set forth in said responses also produce such documents as they may have showing names and addresses of their customers, all as per forms of subpoena duces tecum attached hereto.

Enter: Robert E. Tehan, Judge.

Dated: April 4th, 1962.

[fol. 109] We agree to the entry of the foregoing order this 3rd day of April, 1962.

Earl A. Jinkinson, Attorney for Plaintiff, Room 404, United States Court House, Chicago 4, Illinois. John T. Chadwell, Attorney for Defendant, Pabst Brewing Company, Chadwell, Keck, Keyser, Ruggles & McLaren, 135 South La Salle Street, Chicago 3, Illinois.

[fol. 110] ATTACHMENTS TO AGREED ORDER

SUBPOENA DUCES TECUM

Case No. 59 C 215

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: BREWERY WITNESS

GREETING:

We Command You, that all business and excuses being laid aside, you and each of you attend before Honorable Robert E. Tehan one of the Judges of the United States District Court for said District within thirty (30) days of the date of service hereof, in Room 398 United States Court House in Milwaukee, in said District, to present documentary evidence in a certain cause now pending and undetermined in said Court, wherein the United States is plaintiff and Pabst Brewing Company et al are Defendants, on the part of said Plaintiff and that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid for examination, inspection and copying by the attorneys for the parties, such documents as you have showing the production and sale of beer by your Company for each of the years from 1952 through 1961 inclusive; or, in the alternative, an affidavit executed by you providing all of the following information:

1. Production of beer by each unit of your Company for which a separate Form 103 of the United States Treasury Department—Internal Revenue Service, has been filed. Said information shall show for each six-month period commencing January 1 and July 1 of each year from 1952 through 1961 the total barrels shown on said Form 103 opposite the items marked "Produced" and "Water added in cellar"; and also the total of said two items for each said six-month period.

[fol. 111] 2. Sales of beer in barrels for each unit of your Company for which a Form 103 has been filed for each six-month period commencing January 1 and July 1 of each year from 1952 through 1961 as shown on said Form 103 opposite the item marked, "Sold or Removed Subject to Tax" or for earlier years opposite each of the items marked "Removd tax paid (bulk)" and "Removed tax-paid (bottles or cans)."

3. Sales by your Company as shown on the periodic reports or invoices filed by your Company with each state agency for each state in which your Company has sold beer in any year from 1952 through 1961. Said information shall show the total number of barrels of beer shipped into or sold in each said state for each calendar year from 1952 through 1961 inclusive.

4. In each of the forty-eight continental United States and the District of Columbia sales of beer by brand by your Company in barrels in each of said states as shown by the internal records of your Company or any other source for each calendar year from 1952 through 1961 inclusive, noting as to the beer shipped into each state the number of barrels brewed at each brewery of your Company.

5. In each of the forty-eight continental United States and the District of Columbia sales of beer by brand by your Company in dollars in each of said states as shown by the internal records of your Company or any other source for each calendar year from 1952 through 1961 inclusive, noting as to the beer shipped into each state the dollar value of the beer brewed at each brewery of your Company.

6. Profits and/or losses of your Company after Federal Income Taxes from all brewing operations, including profits or losses, if any, from the operation of Company-owned branches for the distribution of beer at retail for each calendar year from 1952 through 1961 inclusive.

[fol. 112] 7. Production of brewers malt by your Company in 34 pound bushels for each calendar year from 1952 through 1961 inclusive.

8. Sales of brewers malt by your Company in 34 pound bushels and in dollars to each separate purchaser of malt for each calendar year from 1952 through 1961 inclusive.

9. The following definitions shall apply to the terms used in this subpoena:

(a) "Documents" means all letters, communications, correspondence, memoranda, orders, invoices, receipts, reports, financial statements, books, records, or other written or printed material in your possession, custody or control or in the possession, custody or control of your Company's agents, employees, attorneys or accountants (or copies thereof if the originals are not in your possession, custody or control or not in the possession, custody or control of your agents, employees or accountants).

(b) "Your Company" means the brewery indicated immediately following your name in the heading of this subpoena, including all divisions, subsidiaries, and other brewing companies in which said indicated brewery has more than a 50% stock interest.

(c) "Beer" means fermented malt liquor.

And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshals of the appropriate United States District Court to execute and return in due form of law.

—, —, Clerk. —, —, Deputy Clerk.

[Seal.]

Dated: —.

[fol. 113] SUBPOENA DUCES TECUM

Case No. 59 C 215

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: DISTRIBUTOR WITNESS

GREETING:

We Command You, that all business and excuses being laid aside, you and each of you attend before Honorable Robert E. Tehan one of the Judges of the United States District Court for said District within thirty (30) days of the date of service hereof, in Room 398 United States Court House in Milwaukee, in said District, to present documentary evidence in a certain cause now pending and undetermined in said Court, wherein the United States is plaintiff and Pabst Brewing Company, et al are Defendants, on the part of said Plaintiff and that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid for examination, inspection and copying by the attorneys for the parties, such documents as you have showing the purchase and sale of beer by your Company and the names and addresses of customers of your Company for each of the years from 1952 through 1961 inclusive; or, in the alternative, an affidavit executed by you providing all of the following information:

1. Purchases of beer by your Company in dollars and barrels for each calendar year from 1952 through 1961 inclusive. Said information shall show the purchases from each different source of supply separately for each year, and further, as to those sources of supply from which more than one brand of beer is purchased in any one calendar [fol. 114] year, the purchase of beer by brand from each separate source of supply in dollars and barrels for each calendar year from 1952 through 1961 inclusive.

2. Sales of beer by your Company in dollars and barrels

by brand of beer for each calendar year from 1952 through 1961 inclusive.

3. Profits and/or losses of your Company after Federal Income Taxes from the sale of beer for each calendar year from 1952 through 1961 inclusive.

4. A list of the names and addresses of your customers as of January 1, for each year from 1952 through 1961 inclusive.

5. The following definitions shall apply to the terms used in this subpoena:

(a) "Documents" means all letters, communications, correspondence, memoranda, orders, invoices, receipts, reports, financial statements, books, records, or other written or printed material in your possession, custody or control or in the possession, custody or control of your Company's agents, employees, attorneys or accountants (or copies thereof if the originals are not in your possession, custody or control or not in the possession, custody or control of your agents, employees or accountants).

(b) "Your Company" means the organization indicated immediately following your name in the heading of this subpoena or the part thereof engaged in the sale and distribution of beer to the retail trade, including all divisions, subsidiaries, [fol. 115] and related companies engaged in the sale and distribution of beer at retail in which said indicated company has more than 50% stock interest.

(c) "Beer" means fermented malt liquor.

And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshals of the appropriate United States District Court to execute and return in due form of law.

——, ——, Clerk. ——, ——, Deputy Clerk.

[Seal.]

Dated: —.

[fol. 116] SUBPOENA DUCES TECUM

Case No. 59 C 215

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: MALTSTER WITNESS

GREETING:

We Command You, that all business and excuses being laid aside, you and each of you attend before Honorable Robert E. Tehan one of the Judges of the United States District Court for said District within thirty (30) days of the date of service hereof, in Room 398 United States Court House in Milwaukee, in said District, to present documentary evidence in a certain cause now pending and undetermined in said Court, wherein the United States is plaintiff and Pabst Brewing Company, et al are Defendants, on the part of said Plaintiff and that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, for examination, inspection and copying by the attorneys for the parties, such documents as you have showing the production and sale of malt by your Company for each of the years from 1952 through 1961 inclusive; or, in the alternative, an affidavit executed by you providing all of the following information:

1. Production of malt by your Company in 34 pound bushels for each calendar year from 1952 through 1961 inclusive.

2. Sales of malt by your Company in 34 pound bushels and in dollars, showing separately the sales to each purchaser (identifying such purchaser) for each calendar year from 1952 through 1961 inclusive.

3. The following definitions shall apply to the [fol. 117] terms used in this subpoena:

(a) "Documents" means all letters, communications, correspondence, memoranda, orders, invoices, receipts, reports, financial statements, books, records,

or other written or printed material in your possession, custody or control or in the possession, custody or control of your Company's agents, employees, attorneys or accountants (or copies thereof if the originals are not in your possession, custody or control of your agents, employees or accountants).

(b) "Your Company" means all or that part of the Company indicated immediately following your name in the heading of this subpoena engaged in the production and sale of malt, including all divisions, subsidiaries, and other malt producing companies in which said indicated maltster has more than a 50% interest.

And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshals of the appropriate United States District Court to execute and return in due form of law.

——, ——, Clerk. ——, ——, Deputy Clerk.

[Seal.]

Dated: —.

[fol. 118] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

MOTIONS OF DEFENDANT PABST BREWING COMPANY FOR THE ENTRY OF A PROTECTIVE ORDER AND THE CLARIFICATION OF THIS COURT'S ORDER OF APRIL 4, 1962—Filed May 21, 1962.

Defendant Pabst Brewing Company respectfully requests that this Court enter:

1. A protective order in the form attached hereto with respect to the responses to subpoenas served pursuant to this Court's order of April 4, 1962, and
2. An order clarifying this Court's order of April 4, 1962.

As grounds for the first motion referred to above, defendant states:

1. The entry of the protective order will in no way restrict the parties hereto in the preparation of this case for trial.
2. The entry of this order will prevent the unnecessary disclosure of the information contained on the responses to said subpoenas, much of which is confidential business information, including trade secrets. Several parties upon whom said supoenas have been served have indicated a willingness to voluntarily comply but have stated the need for and desirability of such an order to prevent the unnecessary disclosure of confidential business information.

[fol. 119] As grounds for the second motion referred to above, defendant states:

1. The chronology of events leading up to the need for this motion is stated below:

(a) Plaintiff's Further Response to Pre-Trial Order was filed on January 10, 1962 stating that "the distrib-

utor, brewery, and maltster witnesses [which said Response stated it would call] will produce at trial under subpoena such documents as they have showing productions and sale of beer or malt and that in addition the distributor witnesses will produce at trial under subpoena the names and addresses of their customers."

(b) This Court's order of January 18, 1962, directed Defendant Pabst Brewing Company to move for issuance of subpoenas prior to trial in order to enable it to inspect the documents which will be produced at trial by the distributor, brewery and malster witnesses not later than January 29, 1962, and that answering briefs be filed not later than February 12, 1962.

(c) Defendant Pabst Brewing Company filed its motion and supporting memorandum in respect to a return date in advance of trial on said subpoenas of the plaintiff on January 29, 1962.

(d) Plaintiff, by letter from Lee Loevinger by Earl A. Jinkinson to this Court dated, February 1, 1962, stated that "the plaintiff does not desire to make any objections to this motion but requests that the order of the Court on this matter include the corresponding right of the plaintiff to inspect and copy all documents produced by these witnesses"

(e) This Court on April 4, 1962, entered an order [fol. 120] granting said motion.

(f) Pursuant to said order of April 4, 1962, subpoenas have been served or issued for service on thirty-one (31) plaintiff's witnesses listed in its responses to pretrial orders. By agreements between counsel for the plaintiff and counsel for the defendant, Pabst, certain requirements of the subpoenas have been waived and an orderly procedure for responding to the subpoenas by the witnesses had resulted. By letter of May 15, 1962, addressed to counsel for Pabst, a copy of which is attached hereto, counsel for plaintiff has prevented continuation of this orderly procedure.

2. Unnecessary and needless confusion concerning said subpoenas has arisen because of plaintiff's failure to properly interpret this Court's order of April 4, 1962. This has caused great confusion to parties served with said sub-

poenas and has led to a misunderstanding on their part with respect to their need to comply therewith.

3. The position of the plaintiff with respect to this matter set forth in the letter of May 15, 1962, indicates that no progress has been made since the time of the last pretrial conference with respect to expediting pretrial preparations in this case.

4. The entry of a clarifying order is necessary to end the confusion and difficulties arising with respect to said subpoenas.

Dated: May 17, 1962

[fol. 121] Pabst Brewing Company. By /s/ Ray T. McCann, 152 W. Wisconsin Avenue, Milwaukee 3, Wisconsin. /s/ John T. Chadwell, 135 South LaSalle Street, Chicago 3, Illinois. /s/ Glenn W. McGee, 135 South LaSalle Street, Chicago 3, Illinois.

Chadwell, Keck, Kayser, Ruggles & McLaren, Of Counsel.

[fol. 122] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

ORDER REGARDING RESPONSES TO SUBPOENAS ISSUED PURSUANT TO APRIL 4, 1962 ORDER—May 29, 1962

This matter having come before the court on the motions of Pabst Brewing Company for a protective order and for the entry of an order clarifying this court's order of April 4, 1962 and the court having heard arguments of counsel and having extensively considered the matter in chambers with the attorneys for the parties,

It Is Hereby Ordered that the documents produced or affidavits executed by various persons in response to subpoenas served on them pursuant to this court's order in this action on April 4, 1962 and copies thereof shall be accorded confidential treatment as follows:

(a) All original documents produced pursuant to said subpoenas shall be returned to the party producing or executing same after attorneys for the parties to this action have had a reasonable period of time for examination, inspection and copying thereof. Photographic copies or other reproductions of said documents or affidavits shall be presumed to be true and correct and they may be offered in evidence with the same force and effect as the original document or affidavit. The parties waive any objection to such documents or affidavits or copies thereof based on authenticity or genuineness but reserving the right to object to the admission in evidence of any such document on such substantive ground as materiality and relevency, and the right to contradict the truth or accuracy of the contents of any such document or affidavit after its admission.

[fol. 123] (b) All copies of said documents or affidavits in the possession of parties to this action shall be treated as confidential until further order of the court,

and shall be disclosed only to such attorneys or employees of the parties as may be engaged actively in the preparation of this case for use only in the preparation of this case and not otherwise.

It Is Further Ordered that plaintiff herein, the United States of America, shall have a period of sixty (60) days from the date of return of the response to each said subpoena within which to study said response and determine if it does not satisfy plaintiff's requirements in connection with its preparation of its case; if plaintiff determines said response is unsatisfactory it shall notify defendant Pabst Brewing Company within said sixty (60) day period; thereafter plaintiff shall have an additional sixty (60) day period within which to subpoena or otherwise procure such other documentary evidence as it deems appropriate and necessary for the preparation of its case and within such period plaintiff shall fully disclose to defendant Pabst Brewing Company all additional documentary evidence upon which it will rely at trial.

It Is Further Ordered that on the return date of said subpoenas there shall be no taking of testimony of any witness by any party hereto.

Enter: Robert E. Tehan, Judge.

Date: May 29th, 1962

Satisfactory as to form:

Earl A. Jinkinson, Attorney for Plaintiff.
John T. Chadwell, Attorney for Pabst Brewing Company.

[fol. 124] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

ORDER FOLLOWING PRE-TRIAL CONFERENCE OF OCTOBER 12, 1962—OCTOBER 26, 1962

The parties appeared by their respective counsel at a pre-trial conference in the above matter held pursuant to notice on October 12, 1962.

Counsel for plaintiff reported as follows:

1. Plaintiff has completed preparation of its case in chief and has submitted all material to be used by it in the presentation of its case in chief to defendant in the form of responses filed herein in a letter to John Chadwell dated June 13, 1961 and on September 15, 1961 and January 10, 1962, as supplemented by documents and affidavits returned by various witnesses of the plaintiff pursuant to subpoenas *duces tecum* and this Court's orders of April 4, 1962 and May 29, 1962.

2. Agreement between plaintiff and defendant, Pabst Brewing Company, has been and shortly will be reached on the authenticity of certain statistical material deemed relevant by plaintiff to the presentation of its case.

3. Plaintiff is not asserting that draught beer is a separate line of commerce but will introduce at trial statistical material showing the sale of draught and packaged beer in the State of Wisconsin. Such material is deemed relevant by plaintiff soley with respect to its contentions concerning the section or sections of the country involved in this [fol. 125] proceeding.

Now Therefore, counsel having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following stipulations unless modified by the court to prevent manifest injustice:

1. Plaintiff will not present as part of its case in chief any evidence, not disclosed heretofore to defendant, Pabst Brewing Company; *provided,* that if newly discovered evidence comes to the attention of plaintiff hereafter, and if plaintiff elects to introduce such evidence at trial, plaintiff must within a reasonable period after the discovery thereof, disclose the same to defendant, Pabst Brewing Company. Except as provided herein plaintiff shall not introduce evidence at trial which has not previously been disclosed to defendant, Pabst Brewing Company.

2. The parties hereto shall promptly attempt to stipulate as to the authenticity of all statistical material deemed necessary by plaintiff to the presentation of its case. Entry into a stipulation concerning statistical material shall not preclude any party hereto from disputing the relevancy or materiality of the material contained therein at any time hereafter.

3. Plaintiff shall not introduce at trial any evidence seeking to establish draught and/or packaged beer as a separate line of commerce in any section of the country.

4. Defendant, Pabst Brewing Company, shall disclose matters relating to its defense to the plaintiff on or before February 15, 1963 or at such date thereafter which may be established by the court. Such disclosure shall include the name and address of each witness which defendant, Pabst Brewing Company, expects to call at trial, a description of the testimony which the witnesses are expected to give at trial, and the documentary statistical material and exhibits which defendant, Pabst Brewing Company, intends to [fol. 126] introduce at trial together with a description of each witness' relationship with a brewery or the brewing industry and included therein the aspects of the case upon which such testimony will bear and the documents to which it will allude; in addition, the defendant will respond to the statement of plaintiff's theory of the case included in "Plaintiff's Response to Pre-Trial Order" filed September 15, 1961, with respect to the line or lines of commerce, section or sections of the country, and anti-competitive effects of the acquisition; *provided,* that defendant, Pabst Brewing Company, may supplement said disclosure (1) on the basis of newly discovered evidence and (2) to meet the plaintiff's case as it is presented at trial; *provided further*

that defendant, Pabst Brewing Company, shall advise plaintiff of any newly discovered evidence which it intends to disclose at trial within a reasonable period after the discovery thereof; and that defendant, Pabst Brewing Company, shall advise plaintiff within a reasonable period after the close of plaintiff's case in chief of additional material which it will introduce in response to plaintiff's case as presented at trial. Except as provided herein defendant shall not introduce any evidence at trial which has not previously been disclosed to plaintiff.

5. Either party may offer into evidence newly discovered evidence if one of the following conditions is met: (a) the evidence was not in the possession of the party at the time of the disclosure of their case, or (b) the evidence was omitted by inadvertence, or (c) as otherwise ordered by the court for good cause. Such additional evidence may be offered only upon 10 day's notice and upon showing satisfactory to the court that such offer is not inconsistent with the good faith compliance with this and all other pre-trial orders heretofore and hereafter entered.

6. No evidence shall be introduced at trial as to any events occurring after December 31, 1961; *provided*, that at the next pre-trial conference or at such date thereafter [fol. 127] which may be established by the court, plaintiff shall disclose any evidence it will offer concerning events occurring in 1962 and both parties shall be heard with respect to such evidence. Defendant shall be granted a reasonable time to disclose its defense to this evidence.

* * * * * * *

Dated, Milwaukee, Wisconsin, this 26th day of October, 1962.

Enter: Robert E. Tehan, United States District Judge.

Satisfactory as to form:

Earl A. Jinkinson, Attorney for Plaintiff.
Glenn W. McGee, Attorney for Pabst Brewing Company.

[fol. 128] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59C215

[Title omitted]

ORDER FOLLOWING PRE-TRIAL CONFERENCE OF FEBRUARY 25, 1963—March 13, 1963

The parties appeared by their respective counsel at a pre-trial conference in the above matter held pursuant to notice on February 25, 1963.

Counsel for defendant, Pabst Brewing Company reported that defendant Pabst has completed its trial preparation and filed its Response to this court's order following pre-trial conference of October 12, 1962.

Now, therefore, Counsel having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following additional stipulations unless modified by the court to prevent manifest injustice:

1. Plaintiff and defendant Pabst Brewing Company have filed pre-trial responses in conformance with pre-trial orders of this court. No further pre-trial responses shall be required at this time. At the close of plaintiff's chief-in-case, plaintiff may move the court for an order to require additional disclosure by defendant Pabst as to its defense.

2. Any party hereto may substitute an alternate witness from the same company for any witness listed in any pre-trial response filed herein who is deceased or unavailable for any reason satisfactory to the court at the time of the [fol. 129] trial of this proceeding. If any party hereto elects to substitute an alternate witness, such party shall disclose the name, address, brewing industry connection and title of such alternate witness to the other parties to this action within a reasonable time after the discovery thereof, and in any event no later than ten days prior to the date set for the trial of this case to begin; *provided*, that if any witness dies or becomes unavailable at any time subsequent to ten

days prior to the date set for the trial of this case to begin, an alternate witness may be designated at any time thereafter and the other parties hereto shall be notified of such substitution within a reasonable time after the designation of such alternate witness.

* * * * * * *

5. No evidence shall be introduced at trial as to any events occurring after December 31, 1961.

* * * * * * *

[fol. 130] It is further ordered:

* * * * * * *

2. Not later than April 15, 1963, counsel for the plaintiff will submit to the court and to opposing counsel a statement of the issues which the plaintiff considers to be involved in this case. A similar statement will be submitted by counsel for the defendant, Pabst Brewing Company, not later than April 29, 1963.

Dated, Milwaukee, Wisconsin, this 13th day of March, 1963.

Robert E. Tehan, U.S. District Judge.

[fol. 131] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES DEPARTMENT OF JUSTICE
Room 404, United States Courthouse
Chicago 4, Illinois

April 12, 1963.

60-0-37-217
Honorable Robert E. Tehan
Chief Judge
United States District Court
Eastern District of Wisconsin
Milwaukee, Wisconsin

Re: United States v. Pabst Brewing Company et al.,
Civil Action No. 59 C 215

My dear Judge Tehan:

Pursuant to the order of this Court of March 13, 1963 to state the issues involved in this case, the Government responds as follows:

1. The manufacture and distribution of beer is the sole line of commerce. The so-called premium, popular, or local brands of beer do not constitute separate lines of commerce any more than draft, bottled, or canned beer.

2. The sections of the country comprise the State of Wisconsin, the three State area of Wisconsin, Illinois, and Michigan, and the continental United States. Defendant has agreed that the continental United States is an appropriate section of the country.

3. Before the merger of Pabst and Blatz, the defendant Pabst and the Blatz Company were in competition in the various sections of the country hereinabove defined.

4. The Pabst-Blatz merger may substantially lessen competition or tend to create a monopoly because after the merger:

(a) In the State of Wisconsin, Pabst increased its sales position from fourth place to first place;

(b) In the three State area of Wisconsin, Illinois, and Michigan, Pabst increased its sales position from seventh place to first place;

[fol. 132] (c) In the continental United States, Pabst increased its sales position from eleventh place to third place;[1]

(d) Other breweries have been adversely affected or may be so affected;

(e) Many distributors of Pabst and Blatz beer have been terminated and separate Pabst and Blatz distributorships have been consolidated to the injury of competition in the sale and distribution of beer and to the injury of the cancelled distributors;

(f) The manufacturers of barley malt used in the brewing of beer who before the merger sold malt to the Blatz Brewing Company have been deprived of a substantial market inasmuch as the malt requirements of Blatz are now generally provided for by Pabst to the injury of these maltsters and tending to limit competition in the sale of malt.

5. There has been for many years a continual decline in the number of brewery companies, as well as brewery premises, operating in the United States.

Sincerely yours, Lee Loevinger, Assistant Attorney General. By /s/ Earl A. Jinkinson, Chief, Midwest Office, Antitrust Division.

cc: John T. Chadwell, Esq., 135 South La Salle Street, Chicago 3, Illinois.

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[1] Apparently counsel for Pabst have now changed their position that Pabst was in the ninth place before the merger.

[fol. 133] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59 C 215

[Title omitted]

ORDER FOLLOWING PRE-TRIAL CONFERENCE OF MAY 6, 1963—MAY 7, 1963

The parties having appeared by their respective counsel at a pre-trial conference in the above matter, held pursuant to notice, on May 6, 1963, and said counsel having so agreed,

It Is Ordered: That the subsequent course of this action shall be governed by the following stipulations unless modified by the court to prevent manifest injustices;

1. This case is scheduled for trial on October 14, 1963. It is estimated that the trial will last two months.

* * * * * * *

Dated, Milwaukee, Wisconsin, this 7th day of May, 1963

Robert E. Tehan, U.S. District Judge.

[fol. 134] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES DEPARTMENT OF JUSTICE
Room 404, United States Courthouse
Chicago, Illinois 60604

August 19, 1963.

60-0-37-217

Honorable Robert E. Tehan
United States District Judge
Eastern District of Wisconsin
Federal Building
Milwaukee 1, Wisconsin

Re: United States v. Pabst Brewing Company, et al.,
Civil Action No. 59 C 215

My dear Judge Tehan:

In accordance with paragraph three of the order following pre-trial conference of May 6, 1963, and paragraph six of the order following pre-trial conference of February 25, 1963, the Government amends the items referred to on page thirty of "Plaintiff's Further Response to Pre-trial Order" fied herein on January 10, 1962 by the addition of the following material:

Brewers Almanac for 1961

Tables 8 and 42

Brewers Almanac for 1962

Tables 1, 3, 4, 5, 6, 8, 9, 12, 39, 41, 42 and 64

Brewers Almanac for 1963

Table 12

While these additions have not been submitted according to the time schedule set out in the order following pre-trial conference of May 6, 1963, we understand that counsel for Pabst will not object to this.

Sincerely yours, William H. Orrick, Jr., Assistant Attorney General. By Earl A. Jinkinson, Chief, Midwest Office, Antitrust Division.

cc: John T. Chadwell, Esq., Chadwell, Keck, Kayser, Ruggles & McLaren, 135 South LaSalle Street, Chicago, Illinois 60603.

[fol. 135] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

No. 59 C 215

ORDER FOLLOWING CONFERENCE OF SEPTEMBER 11, 1963—September 12, 1963

A conference having been held in the above matter on September 11, 1963, at the request of counsel, and all parties having appeared by their respective counsel, and said counsel having so agreed,

It Is Ordered:

1. The trial of this case, previously scheduled for October 14, 1963, is rescheduled for January 6, 1964.

2. Paragraph 2 of the court's order of May 7, 1963, is amended to read as follows:

Not later than December 23, 1963, counsel for the plaintiff and for the defendant, Pabst Brewing Company, will submit to the court and to opposing counsel pre-trial briefs setting forth the facts they intend to prove, the theory of case relied upon, citations of authority in support of the positions taken and a brief discussion of any evidentiary problems foreseen.

Dated, Milwaukee, Wisconsin, this 12th day of September, 1963.

Robert E. Tehan, U.S. District Judge.

[fol. 136] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

Civil Action No. 59 C 215

MOTION FOR PERMISSION TO ISSUE SUBPOENAS FOR WITNESSES LIVING OUTSIDE OF THE EASTERN DISTRICT OF WISCONSIN—Filed January 3, 1964.

The United States of America, plaintiff, by its attorneys hereby moves pursuant to the provisions of Title 15 U.S.C. § 23 for an order granting permission to issue subpoenas to witnesses residing more than one hundred miles and outside of the Eastern District of Wisconsin.

All such witnesses reside outside of the Eastern District of Wisconsin at a distance in excess of one hundred miles from Milwaukee, Wisconsin where the trial is to be conducted.

All such witnesses are believed by the plaintiff to have evidence material to the issues of this cause, and that the testimony of said witnesses is necessary to establish the alleged violations of the charges and allegations contained in the complaint filed in the above case.

Earl A. Jinkinson, Attorney, Department of Justice, Room 404, United States Courthouse, Chicago, Illinois 60604, WEbster 9-2395.

[fol. 137] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

ORDER APPROVING ISSUANCE OF SUBPOENAS—January 3, 1964

This matter having been heard on the motion of the United States of America, plaintiff, for an order pursuant to the provisions of Title 15 U.S.C. §23 authorizing the issuance of subpoenas to witnesses residing more than one hundred miles and outside the Eastern District of Wisconsin, and it appearing from statements of counsel for the plaintiff that said witnesses possess necessary and relevant testimony needed in the trial of the above case,

It Is Hereby Ordered that the plaintiff may issue subpoenas to witnesses residing more than one hundred miles and outside of the Eastern District of Wisconsin.

Enter: Robert E. Tehan, United States District Judge.

Dated at Milwaukee, Wisconsin, this 3rd Day of January, 1964.

[fol. 138] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

PRE-TRIAL ORDER—January 20, 1964

A conference having been held in the above matter on January 13, 1964, at the request of counsel, and all parties having appeared by their respective counsel, and said counsel having so agreed,

It Is Hereby Ordered:

* * * * * * *

[fol. 139] 7. A list of all the witnesses to be called and the order of their expected appearances on the witness stand during each week of the trial of this case shall be delivered to opposing counsel no later than Wednesday of the preceding week.

Enter: Robert E. Tehan, United States District Judge.

Date: January 20th 1964

Agreed upon as to form:

John T. Chadwell, Attorney for Pabst Brewing Company.
Earl A. Jinkinson, Attorney, Department of Justice.

[fol. 140] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES DEPARTMENT OF JUSTICE
Room 404, United States Courthouse
Chicago, Illinois 60604

January 22, 1964.

60-0-37-217

Honorable Robert E. Tehan
Chief Judge
United States District Court
Eastern District of Wisconsin
Federal Building
Milwaukee 1, Wisconsin

Re: United States v. Pabst Brewing Company et al.,
Civil Action No. 59 C 215

My dear Judge Tehan:

Pursuant to the final pre-trial order, the list of plaintiff's witnesses for the week beginning January 27, 1964 is to be furnished to defense counsel on January 22, 1964. As was indicated to some extent at the last pre-trial conference, attorneys for the Government have been assiduously attempting to reduce the number of witnesses and thus narrow the issues.

It is now the decision of the Government that this case well lends itself to trial as a purely documentary case with no live witnesses.

The purpose of this letter is to inform the Court and defense counsel of this decision and the resulting sharp curtailment of the length of trial required for the Government's case. We now consider it probable that the Government will rest within two days commencing on January 27, 1964.

Sincerely yours, William H. Orrick, Jr., Assistant Attorney General. By Earl A. Jinkinson, Chief, Midwest Office, Antitrust Division.

cc: John T. Chadwell, Esq., Chadwell, Keck, Kayser, Ruggles & McLaren, 135 South LaSalle Street, Chicago, Illinois 60603.

[fol. 141] [File endorsement omitted]

[fol. 142] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

BRANCH I

Civil Action No. 59-C-215

UNITED STATES OF AMERICA, Plaintiff

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants.

Transcript of Proceedings upon Trial to the Court on the Issue of Liability—January 27-28, 1964

Be it remembered that heretofore, to-wit, commencing on Monday, January 27, 1964, at 10:25 o'clock a.m. of said day, the above-entitled matter came on for hearing before the Honorable Robert E. Tehan, Chief Judge of said Court, upon the pleadings heretofore filed herein.

APPEARANCES:

Earl A. Jinkinson, Bertram M. Long, Francis C. Hoyt, John T. Cusack, and William Thomas Huyck, Attorneys (Anti-Trust Division), Department of Justice, on behalf of the Plaintiff;

[fol. 143] John T. Chadwell, Esq., Ray T. McCann, Esq., Glenn W. McGee, Esq., David A. Nelson, Esq., Frederick Pink, Esq., and Joseph A. Gray, Esq., on behalf of the Defendant, Pabst Brewing Company;

Ralph M. Hoyt, Esq., on behalf of the Defendants, Schenley Industries, Inc., and The Val Corporation.

* * * * * * *

[fol. 144] OFFERS IN EVIDENCE

Mr. Long: The Government offers into evidence Exhibits JX that are denominated "JX-1"—Joint Exhibit 1 to Joint Exhibit 100. They are in one of our notebooks.

These, your Honor, were agreed exhibits of statistics on tax withdrawals, consumption, production, sales of beer in

various states, sections of the country, and the United States.

These will be the basis for charts and demonstrative exhibits that the Government will offer at a later time there.

Mr. Chadwell: Have you finished?

Mr. Long: I have offered them, JX-1 through JX-100, inclusive.

Mr. Chadwell: I would like to make a comment on them, your Honor.

The Court: Yes.

Mr. Chadwell: As Mr. Long has said, there is no question about authenticity of any of these exhibits; we have stipulated on them. We started out—first I want to make this point: We call them JX instead of DX, which the other exhibits are referred to the Government will offer in evidence, because in preparing this series that Mr. Long has just offered in evidence, they were considered to be Joint Exhibits. Well, the Government is offering them, I take it, [fol. 145] as Government Exhibits. We don't want any of our exhibits offered at this point. This is the Government's case. They are now offering them as Joint Exhibits. They are offering them as Government Exhibits that are designated JX-1 to 101.

Mr. Long: No matter what you call them, we offer them as part of our case.

* * * * * * *

[fol. 146] DEPOSITION OF HARRIS PERLSTEIN

Mr. Hoyt: If the court please, the Government now proposes to introduce portions of a deposition of one Harris Perlstein, which deposition was taken on August 7, 1961.

* * * * * * *

[fol. 147] "Q. Where do you reside, Mr. Perlstein?

"A. Chicago, 5349 North Sheridan Road, in Chicago.

"Q. What is your business that you are engaged in?

"A. Chairman of the Pabst Brewing Company."

* * * * * * *

[fol. 148] "Q. Do you know of any premium beer that does not have national advertising?

"A. National advertising is important to national distribution. In our instance, of course, with our beer sold throughout the country, as many beers are beginning to be sold, national advertising is an effective tool to work with to reach large numbers of consumers, and this is available to almost anyone.

"Now you keep asking me about premium. There are some firms who occasionally use ads in the national magazines or put on a television show—I might cite one, Carling. I don't know whether they correspond to the definition of premium or not. That is a very vague term. But they do use some national advertising.

"There are a number of firms that use national advertising. National advertising to anybody who must have real volume to keep its plants going is important.

"Q. Do I take it from what you have testified that there [fol. 149] are premium beers, as we use that term, that are nationally advertised and there may be premium beers that are not nationally advertised?

"A. There are beers that say they are premium beers that may not be nationally advertised.

"Q. Your reference to Carling as advertising, it may or may not be a premium beer?

"A. Yes, but I am sure if you ask any brewer whether his beer is a premium beer or not, the chances are that he will say it is a premium beer.

"Now to what extent the trade agrees with him or to what extent the consumer agrees with him, I am not in a position to say. I can't really narrow this term down any more than I have already done.

"Q. At the time of the acquisition of Blatz, did Blatz claim they had a premium beer?

"A. Yes, they had had nationally distributed beer also.

"Q. They had national advertising, too?

"A. They had had national advertising also."

* * * * * * *

[fol. 150] "Q. How do you increase the distribution of beer such as the Pabst Blue Ribbon and the Platz Pilsners? What are the ways in which you increase sales?

"A. Increase sales?

"Q. Yes.

"A. Well, you can only increase sales by winning more consumers to your brand. The real sales struggle is the struggle between brands of beer and everything that goes with reaching the consumer plays a part in increasing sales. You have got to secure distribution in retail outlets, in the maximum number of retail outlets. This is point No. 1.
[fol. 151] "You have got to get your beer where people can buy it. Then you have got to present it through advertising of one kind and another, whether it be media advertising or whether it be what we call point-of-sale or point-of-customer advertising to call attention of the customer to the brand. You have to do all of these things. It is a many-sided process."

• • • • • • •

[fol. 152] "Q. What percentage of the sales of Pabst Blue Ribbon beer was made before the acquisition of Blatz [fol. 153] through distributors?

"A. Oh, probably, and this is approximate, eighty per cent."

Turning to page 103, the question: "What percentage. . . ."

"Q. What percentage of the distribution of Blatz beer since the acquisition has been through wholesalers and distributors?

"A. Since the acquisition?

"Mr. Chadwell: You are talking about Blatz now?
"Mr. Long: Blatz Pilsner.

"By the Witness:

"A. If you will keep in mind that these are approximations on my part, I would say 75 to 80 per cent.

"By Mr. Long:

"Q. Do you know what it was before acquisition?
"A. Probably the same."

• • • • • • •

DEPOSITION OF ROCCO B. BUNINO

The Government next proposes to introduce portions of a deposition of Rocco B. Bunino, which was taken on Au-
[fol. 154] gust 8, 1961.

* * * * * * *

"Q. Are you an officer of the Pabst Brewing Company, Mr. Bunino?

"A. I am vice president of Pabst Brewing Company."

* * * * * * *

[fol. 155] "Q. I notice that you have not mentioned Schlitz
[fol. 156] or Budweiser. What is their price? I didn't ask you, but what is their price on their various bottles and cans and so forth in this metropolitan New York area at this time?

"A. They are at the premium price level unless they put on some kind of a program, but that is their rating. And, of course, again I come back to the consumer, you are competing all the time because it isn't always price that sells beer. Sometimes it is, but it isn't always. It is a matter of getting the consumer acceptance that counts.

"Q. Two beers may compete where their prices are different?

"A. They may. You are competing for taste buds, consumer taste buds, and you are competing all the time.

"Q. If consumer have a taste for a beer, they will buy it even though it may be priced more than another beer; is that right?

"A. Yes, I would say they would."

* * * * * * *

[fol. 157] "Q. At the present time, are the prices to distributors of Blatz Pilsner at the so-called local price level in the State of Wisconsin?

"A. What brands are you referring to?

"Q. Blatz Pilsner.

"A. No, I would not say that they are local prices, as such.

"Q. Are they at the premium prices, so-called?

"A. No, they are not.

"Q. Where are they? What price are they?

"A. They are in between.

"Q. How do they compare at the present time with the prices to distributors for the Pabst Blue Ribbon beer?

"A. About 20¢ a case.

"Q. Which way?

"A. Difference.

'Q. More or less?

[fol. 158] "A. Less.

• • • • • • •

[fol. 159] [File endorsement omitted]

[fol. 160] Milwaukee, Wisconsin, Tuesday, January 28, 1964, 10:00 o'clock a.m.

• • • • • • •

[fol. 161] OFFERS IN EVIDENCE

Mr. Cusack: Government now offers into evidence, Your Honor, Government Exhibit 266—correction, Your Honor, Government Exhibit 265 which is a copy of Table 64 of the 1962 Brewers Almanac which is entitled Method of Tax [fol. 162] Collection by States, July 1, 1962.

This exhibit, Your Honor, brings up to date Government Exhibit 255.

Mr. Chadwell: I note the same objection made with respect to GX 255 and GX 256.

Also, in addition, so far as 265 is concerned, it seems to be fore the—for a period after the cut-off date that's been established by pre-trial order, namely, December 31, 1961.

Mr. Cusack: Your Honor, we are under the impression that this Table 64 does include—cover the period of time covered in the calendar year 1961. However, if there are any laws or any material contained in Table 64 which is outside of the period of time, of course, we would make no use of it.

Mr. Long: It's offered only for 1961, to the extent it covers 1961.

The Court: It's supposed to advise us that Wisconsin is a dollar a barrel tax, monthly reports?

Mr. Cusack: Yes, Your Honor. This is the same as the prior exhibit on this material.

The Court: It will be received subject to the objection.

* * * * * * *

[fol. 163] Mr. Cusack: The Government offers into evidence Government Exhibit 210 which is a chart showing the percentage of beer sold by the top twenty-five brewing [fol. 164] companies from 1942 through 1961.

Mr. Chadwell: As I understand, Your Honor, on this particular chart there is some question as to whether the figures before and after 1952 are comparable, and I would like to have Mr. Nelson, who is more familiar with these figures than I am, state the position we take on that.

Mr. Nelson: Your Honor, with respect to the figures for 1952—with respect to the figures for 1957 through 1961, these are from a series of joint exhibits that are already in evidence. Similar information on stipulated material is also available for the years 1952 through 1956. However, this chart does not show those figures for which we have an agreement as to authenticity. The figures for the years prior to 1952 are based on a brewing industry survey publication which is a publication I think of which no one knows the validity of the information provided. The figures shown therein may be incorrect. It's the best information we have. We simply don't know.

The Court: For what purpose is the Government offering this?

Mr. Cusack: The Government is offering this for the purpose of showing the increased concentration in the brewing [fol. 165] industry which we believe laid down by the Supreme Court in the Brown Shoe case is an element to be considered in all mergers.

Insofar as inaccuracies are concerned, I should like to point out that the material for 1952 through 1956 inclusive which Mr. Nelson refers to has the following disparity with the figures that we have which I will show you are very minor. For example, we have 60.2 per cent for the year 1952 while Mr. Nelson states that it should be 60.4 per cent. In 1953 we have 62.1; Mr. Nelson claims it should be 60.85.

1954 we have—Correction; 1953 we have 61.3, and they claim it should be 60.85. 1954, we have 62.1 and they claim we should have 62.19. In 1955 we have 64.3 and they claim it should be 65.41, which is, in fact, Your Honor, an increase of concentration, not a decrease. We essentially are being overly fair I think here. In 1956 we have 67.5 and they have 67.33.

Your Honor, we are faced with a situation in preparing this type of chart of being forced to use the material available to us and this was the only thing we did have available to us from '42 through '51 inclusive. And we feel that the chart is accurate or as nearly accurate as is conceivable.

Mr. Chadwell: Pretty shaky ground for arguing evidence [fol. 166] ought to be admissable because it is the best they can find. I don't know which figures are correct, but if they are not comparable, if they are not on a comparable basis, then I don't think the chart is accurate, and if it is not accurate, it shouldn't be admitted. It may be that the trend is generally—It may be the trend is generally what this chart shows as to the top twenty-five brewing companies, but I don't think this chart is accurate and, therefore, shouldn't be admitted in evidence.

The Court: Well, it will be received subject to that objection.

Mr. Chadwell: I want to make the point also if Your Honor please, that this, as Mr. Cusack said, is evidently offered for the purpose of showing concentration in the brewing industry on a national basis. It shows top twenty-five. Well, they have offered no evidence indicating that there is any significance whatsoever in the top twenty-five.

The Court: I was about to ask the question. How come it is twenty-five. Why not twenty, fifteen or fifty?

Mr. Cusack: We have another chart showing the top ten. [fol. 167] Mr. Chadwell: That doesn't prove the top twenty-five is right. I think the top twenty-five proves the top ten is not right and vice versa.

The Court: I am sorry I asked the question. All right.

Mr. Cusack: The Government offers into evidence GX 211 which is a bar chart showing the percentage of beer sold in the United States by the top ten brewing companies for 1948, 1957 and 1961. This, again, Your Honor, is put in

evidence to show concentration among the top ten brewing companies.

Mr. Chadwell: I object to it on the ground that the top ten doesn't mean anything any more than the top twenty-five does. Also that 1948 is not prepared on a comparable basis to '57 and '61.

The Court: It will be received subject to the objection.

Mr. Cusack: The Government offers Government Exhibit 212 which is a chart entitled Decline in the Number of Breweries in the United States and the Trend Toward Concentration in the Brewing Industry.

The sub-heading on this chart, Your Honor, Government Exhibit 212 is entitled "The Number of Breweries Operating in the United States and Their Relation to Taxpaid Withdrawals."

[fol. 168] Mr. Chadwell: I object to this chart on two grounds, and I object to the statement of counsel about it also not being in evidence.

The heading of this chart is argumentative. It says decline in the number of breweries in the United States and the trend towards concentration in the brewing industry. The heading says there is a trend toward concentration. The chart doesn't prove that there is nor does the chart show what concentration means.

I also object to it because the explanatory—purportedly explanatory statement at the foot of the chart beginning with the words "from 1935 to 1961" is argumentative. It is not—Again there is not a factual statement there.

I think that if your Honor feels that this chart is admissable in evidence the heading should be stricken and so shor'd the statement at the bottom of the chart as argumentative and not based on anything in evidence.

The Court: It will be received subject to the objection.

I think we will suspend at this time until 1:45.

(Hearing adjourned to reconvene at 1:45.)

[fol. 169] Milwaukee, Wisconsin, Tuesday, January 28, 1964, 1:45 o'clock p.m.

Court met pursuant to recess last above noted.

All parties present.

The Court: The Government may continue.

Mr. Cusack: The Government offers into evidence Govern-

ment Exhibit 213, being a chart entitled "Brewery Attrition 1949 through 1961," inclusive, showing the number of breweries operated by states, for the States of Wisconsin, Illinois, Michigan; for the three-State area, Wisconsin, Illinois and Michigan, and for the United States.

Mr. Chadwell: Objection, immaterial.

The Court: It will be received subject to the objection.

Mr. Cusack: We'd like to point out, your Honor, from the chart that the year 1949 there were 55 breweries operated in the State of Wisconsin; for 1961 this had dropped to 33 breweries, which is a 40% decline in the number of breweries.

In the three-State area of Wisconsin, Illinois and Michigan, there were 110 breweries operated in 1949 which, by [fol. 170] 1961, had dropped to 58, which was a decline in the number of breweries of 47.3%.

In the United States in 1949 there were 440 breweries, which by 1961 had dropped to 229 breweries, which was a decline of 48%.

• • • • • • •

[fol. 171] Deposition of Rocco B. Bunino (resumed)

Mr. Chadwell: May it please the Court, as I said yesterday, we reserved the right to check over the deposition of Mr. Bunino, which we had not had an opportunity to do, and request the right to read into the record any other portions relating to those portions read by the Government yesterday, which we thought were relevant to those portions, and we have done that, and we do have a few portions of the Bunino deposition we would like to read into the record, which relate to those read by the Government that we overlooked yesterday when we read those portions.

Mr. Hoyt: As long as they are relevant.

Mr. Chadwell: We are——

Mr. Long: As long as they modify or explain or relate or tend to extenuate.

Mr. Chadwell: We are reading them, of course, in the Government's case. It relates to what you did read.

[fol. 172] "Q. I think you testified that brands compete with brands?

"A. Oh, yes, they do. They certainly do, brands compete with brands.

"Q. Pabst competes with Blatz?

"A. For the consumer. Brands compete with brands for the consumer.

"Q. Pabst and Blatz compete, then, on that basis?

"A. Oh, yes, they do. We are so particular about that, we won't even allow Pabst and Blatz to be stacked next to each other. They have to compete. We couldn't possibly exist without either one of them now."

* * * * * * *

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-1

TAXPAID WITHDRAWALS BY STATES

	1933		RANK	1934		RANK	1935		RANK
	Barrels	%		Barrels	%		Barrels	%	
	942	*	33	10,970	.03	36	25,158	.06	35
	986,178	4.83	8	2,015,963	5.08	8	2,015,169	4.49	10
do	165,007	.81	18	236,619	.60	20	224,193	.50	21
	266,181	1.30	15	485,890	1.23	17	539,377	1.20	16
re	1,733	.01	31	10,493	.03	37	3,914	.01	39
	74,402	.36	20	90,830	.23	25	113,750	.25	26
a	27,817	.14	24	114,139	.29	23	201,495	.45	22
a	655	*	34	6,566	.02	38	11,454	.03	37
	500	*	35	20,250	.05	35	31,271	.07	34
is	1,434,748	7.03	4	2,902,488	7.32	4	3,125,394	6.97	4
a	363,968	1.78	12	1,148,017	2.90	11	1,630,088	3.63	11
	1,680	.01	32	46,583	.12	29	123,996	.28	25
ky	264,438	1.30	16	640,271	1.61	15	697,756	1.56	15
iana	292,382	1.43	14	532,843	1.34	16	515,520	1.15	17
and	423,887	2.08	11	1,040,863	2.62	13	1,210,686	2.70	12
	325,467	1.60	13	1,079,573	2.72	12	1,160,225	2.59	13
gan	653,146	3.20	10	2,424,690	6.11	6	2,881,620	6.42	6
ota	970,840	4.76	9	1,766,181	4.45	9	2,034,459	4.53	9
ri	1,026,351	5.03	7	2,122,856	5.35	7	2,259,038	5.03	8
a	53,445	.26	21	179,624	.45	21	169,107	.38	23
ka	37,615	.18	22	141,207	.36	22	233,549	.52	20
	23,282	.11	26	25,868	.07	32	18,546	.04	36
pshire	8,693	.04	30	56,035	.14	28	64,571	.14	30
rsey	1,058,538	5.19	6	1,639,849	4.14	10	2,308,142	5.14	7
rk	4,607,379	22.58	1	7,066,446	17.82	1	7,888,560	17.58	1
	1,137,138	5.57	5	2,678,514	6.75	5	2,956,258	6.59	5
na	--	-	-	40,041	.10	31	55,800	.12	31
	32,509	.16	23	100,743	.25	24	108,316	.24	27
	2,683,743	13.16	3	4,710,522	11.88	2	5,285,742	11.78	2
k.	126,894	.62	19	333,654	.84	18	406,530	.91	19
	--	-	-	3,873	.01	39	5,801	.01	38
	19,860	.10	27	80,614	.20	26	131,909	.29	24
	24,882	.12	25	293,395	.74	19	462,599	1.03	18
	18,210	.09	28	80,433	.20	27	89,242	.20	28
ia	--	-	-	24,456	.06	34	53,218	.12	32
	232,480	1.14	17	826,483	2.08	14	833,933	1.86	14
	--	-	-	24,823	.06	33	74,081	.17	29
	3,039,819	14.90	2	4,608,201	11.62	3	4,867,456	10.85	3
s	15,486	.08	29	43,854	.11	30	49,716	.11	33
	20,400,295(99.97)			39,654,720(99.98)			44,867,639(100.00)		

re is under .005%.

[fol. 174]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-2

TAXPAID WITHDRAWALS BY STATES

State	1936 Barrels	1936 %	1936 RANK	1937 Barrels	1937 %	1937 RANK	193 Barrels	
Arizona	29,355	.06	37	23,281	.04	37	24,201	
Calif.	2,565,247	4.85	9	2,569,861	4.63	9	2,382,598	4
Colorado	275,179	.52	21	276,429	.50	22	240,479	
Conn.	523,173	.99	18	504,607	.91	19	400,819	
Delaware	527	*	40	18,577	.03	39	37,075	
D. C.	91,866	.17	31	85,295	.15	31	74,632	
Florida	241,873	.46	22	277,523	.50	21	238,269	
Georgia	108,520	.21	29	100,770	.18	30	70,676	
Idaho	37,297	.07	36	27,898	.05	36	34,960	
Illinois	3,714,144	7.02	5	3,848,129	6.93	5	3,650,037	7
Indiana	2,047,575	3.87	11	1,994,426	3.59	11	1,646,476	3
Iowa	190,603	.36	23	179,891	.32	24	162,190	
Kentucky	904,189	1.71	14	875,066	1.58	15	737,644	1
Louisiana	722,381	1.37	16	821,772	1.48	16	772,080	1
Maryland	1,272,938	2.41	12	1,310,133	2.36	12	1,225,126	2
Mass.	1,179,358	2.23	13	1,250,824	2.25	13	1,185,201	2
Michigan	3,057,446	5.78	6	3,079,487	5.54	8	2,643,435	5
Minn.	2,448,120	4.63	10	2,544,897	4.58	10	2,512,517	4
Missouri	2,869,975	5.43	8	3,390,915	6.11	6	3,604,616	7
Montana	189,739	.36	24	182,968	.33	23	186,434	
Nebraska	409,225	.77	20	429,257	.77	20	336,802	
Nevada	20,752	.04	38	20,492	.04	38	16,738	
New Hamp.	54,480	.10	34	47,145	.08	35	29,520	
N. J.	2,894,893	5.47	7	3,245,515	5.84	7	3,151,656	6
New Mexico	391	*	41	1,898	*	41	5,185	
New York	8,561,443	16.19	1	8,941,842	16.10	1	8,304,877	16
No. Car.	41,817	.08	35	84,451	.15	32	75,604	
Ohio	3,742,077	7.08	4	4,045,558	7.28	4	3,517,294	6
Oklahoma	122,933	.23	26	133,125	.24	26	116,800	
Oregon	120,340	.23	27	116,584	.21	28	83,386	
Penn.	6,077,043	11.49	2	6,256,797	11.27	2	5,715,121	11
R. I.	505,830	.96	19	638,617	1.15	18	604,401	
So. Dak.	5,710	.01	39	5,092	.01	40	3,746	
Tenn.	150,241	.28	25	126,747	.23	27	104,224	
Texas	695,728	1.32	17	786,160	1.42	17	799,829	
Utah	96,383	.18	30	107,189	.19	29	101,717	
Virginia	110,193	.21	28	143,255	.26	25	103,137	
Wash.	861,227	1.63	15	883,246	1.59	14	706,623	
W. Va.	72,752	.14	32	56,592	.10	33	38,909	
Wisc.	5,816,778	11.00	3	6,053,157	10.90	3	5,570,487	10
Wyoming	58,633	.11	33	54,140	.10	34	56,895	
TOTAL	52,888,374	(100.02)		55,539,608	(99.99)		51,272,416	(1

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-3

TAXPAID WITHDRAWALS BY STATES

	1939		RANK	1940		RANK	1941		RANK
te	Barrels	%		Barrels	%		Barrels	%	
ona	27,937	.05	38	22,237	.04	38	16,829	.03	38
if.	2,473,674	4.70	10	2,428,332	4.71	9	2,507,510	4.42	9
rado	249,872	.47	21	249,695	.48	21	280,979	.50	21
.	404,606	.77	19	366,661	.71	19	321,063	.57	20
are	48,979	.09	34	47,036	.09	34	52,492	.09	32
.	76,374	.15	31	108,257	.21	29	146,096	.26	26
ida	221,999	.42	22	221,753	.43	22	250,309	.44	22
gia	65,349	.12	32	60,249	.12	32	73,930	.13	31
o	31,996	.06	36	34,997	.07	36	36,231	.06	35
ois	3,660,173	6.95	5	3,585,410	6.95	5	3,721,712	6.56	7
ska	1,660,965	3.15	11	1,640,030	3.18	11	1,933,058	3.41	11
	152,601	.29	24	143,673	.28	24	115,906	.20	29
cky	756,275	1.44	16	787,979	1.53	16	986,225	1.74	15
iana	844,850	1.60	14	896,453	1.74	14	1,029,683	1.82	14
land	1,272,763	2.42	12	1,217,539	2.36	12	1,334,600	2.35	12
.	1,209,398	2.30	13	1,142,755	2.22	13	1,260,907	2.22	13
igan	2,669,446	5.07	8	2,645,966	5.13	8	2,987,910	5.27	8
.	2,534,147	4.81	9	2,260,867	4.39	10	2,066,097	3.64	10
uri	4,044,169	7.68	4	4,158,132	8.07	4	4,974,403	8.77	4
na	182,056	.35	23	190,851	.37	23	178,926	.32	24
aska	309,011	.59	20	312,841	.61	20	472,101	.83	19
a	15,818	.03	39	16,619	.03	39	13,676	.02	39
amp.	31,775	.06	37	37,245	.07	35	33,431	.06	36
.	3,305,215	6.28	7	3,267,469	6.34	7	3,737,109	6.59	6
Mexico	694	*	41	--	-	-	--	-	-
York	8,461,366	16.07	1	8,138,075	15.79	1	8,506,170	15.00	1
Car.	92,506	.18	29	89,247	.17	30	103,345	.18	30
	3,635,837	6.91	6	3,530,229	6.85	6	3,984,180	7.03	5
ona	94,347	.18	28	61,654	.12	31	51,569	.09	33
n	90,022	.17	30	128,893	.25	26	156,802	.28	25
.	5,915,371	11.24	2	5,857,530	11.36	2	6,457,231	11.39	2
.	597,986	1.14	18	580,630	1.13	18	640,209	1.13	18
ak.	3,147	.01	40	2,384	*	40	2,626	*	40
	112,417	.21	25	142,884	.28	25	189,576	.33	23
a	783,382	1.49	15	807,460	1.57	15	877,789	1.55	17
	110,951	.21	26	119,485	.23	28	117,636	.21	28
nia	109,971	.21	27	119,861	.23	27	131,464	.23	27
	717,851	1.36	17	774,275	1.50	17	898,153	1.58	16
.	34,406	.07	35	25,796	.05	37	24,850	.04	37
	5,578,603	10.60	3	5,280,492	10.24	3	5,975,442	10.54	3
ng	59,200	.11	33	53,604	.10	33	50,503	.09	34
	52,647,505	(100.01)		51,555,545	(100.00)		56,698,728	(99.97)	

gure is under .005%.

[fol. 176]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-4

TAXPAID WITHDRAWALS BY STATES

State	1942 Barrels	%	RANK	1943 Barrels	%	RANK	1944 Barrels	%
Arizona	23,221	.04	38	39,702	.06	38	55,985	.0
Calif.	3,029,018	4.74	9	3,856,760	5.36	8	4,426,890	5.6
Colorado	388,990	.61	20	439,065	.61	21	500,531	.6
Conn.	281,397	.44	22	330,449	.46	22	457,579	.5
Delaware	61,357	.10	33	66,723	.09	34	99,668	.1
D. C.	166,663	.26	26	183,918	.26	27	186,584	.2
Florida	383,719	.60	21	471,599	.65	20	508,715	.6
Georgia	118,003	.18	30	152,935	.21	31	171,212	.2
Idaho	50,242	.08	35	55,227	.08	35	59,014	.0
Illinois	3,959,795	6.19	7	4,650,886	6.46	7	5,331,047	6.7
Indiana	2,269,801	3.55	10	2,399,477	3.33	10	2,480,835	3.1
Iowa	139,632	.22	29	178,136	.25	29	186,976	.2
Kentucky	1,103,721	1.73	17	1,192,144	1.66	16	1,230,999	1.5
Louisiana	1,147,076	1.79	16	1,183,686	1.64	17	1,195,944	1.5
Maryland	1,437,014	2.25	12	1,564,076	2.17	12	1,682,350	2.1
Mass.	1,404,112	2.20	13	1,550,849	2.15	13	2,085,103	2.6
Michigan	3,194,567	4.99	8	3,513,903	4.88	9	3,937,080	4.9
Minnesota	1,995,664	3.12	11	2,268,483	3.15	11	2,656,617	3.3
Missouri	5,645,271	8.83	4	5,827,459	8.09	4	5,908,516	7.4
Montana	176,120	.28	25	213,198	.30	26	239,301	.3
Nebraska	630,743	.99	19	672,889	.93	19	702,251	.9
Nevada	16,856	.03	39	18,133	.03	39	25,688	.0
New Hamp.	36,882	.06	37	49,668	.07	36	63,519	.0
N. J.	4,177,645	6.53	6	4,708,386	6.54	6	5,012,635	6.2
New York	9,226,275	14.43	1	10,412,052	14.46	1	11,920,186	15.0
No. Car.	117,263	.18	31	132,290	.18	32	144,257	.1
Ohio	4,564,489	7.14	5	5,247,821	7.29	5	5,684,292	7.1
Oklahoma	108,937	.17	32	182,904	.25	28	205,290	.2
Oregon	203,139	.32	24	226,064	.31	25	274,880	.3
Penn.	7,022,867	10.98	3	7,822,301	10.86	3	8,705,600	11.0
R. I.	681,651	1.07	18	814,322	1.13	18	895,456	1.1
So. Dak.	1,460	*	40	--	-	-	--	
Tenn.	224,081	.35	23	236,874	.33	24	237,448	.3
Texas	1,174,173	1.84	14	1,297,469	1.80	15	1,404,127	1.8
Utah	148,398	.23	28	163,659	.23	30	166,634	.2
Virginia	165,474	.26	27	292,210	.41	23	301,630	.4
Wash.	1,169,216	1.83	15	1,325,538	1.84	14	1,449,974	1.8
W. Va.	39,416	.06	36	49,545	.07	37	56,770	.0
Wisc.	7,214,582	11.28	2	8,143,833	11.31	2	8,366,988	10.6
Wyoming	59,313	.09	34	74,044	.10	33	87,151	.1
TOTAL	63,958,243	(100.04)		72,008,677	(100.00)		79,105,722	(10

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-5

TAXPAID WITHDRAWALS BY STATES

	1945		RANK	1946		RANK	1947		RANK
	Barrels	%		Barrels	%		Barrels	%	
	69,951	.09	36	82,043	.10	36	114,205	.13	32
f.	4,723,480	5.82	8	4,272,893	5.42	8	4,550,949	5.23	8
edo	551,958	.68	20	485,395	.62	21	614,150	.71	20
	422,584	.52	22	428,766	.54	22	219,077	.25	25
are	118,996	.15	33	117,588	.15	33	153,298	.18	30
	201,825	.25	29	184,613	.23	28	169,123	.19	27
ida	526,679	.65	21	492,069	.62	20	457,548	.53	21
gia	179,223	.22	30	146,071	.19	32	75,516	.09	36
	75,664	.09	35	82,478	.10	35	69,647	.08	37
sota	5,576,386	6.87	6	5,905,114	7.49	4	5,352,095	6.16	7
ana	2,618,286	3.23	11	2,367,781	3.00	11	3,204,550	3.69	10
	216,632	.27	27	215,319	.27	27	158,879	.18	29
ucky	1,260,259	1.55	17	1,192,769	1.51	16	1,506,074	1.73	16
iana	1,269,064	1.56	16	1,124,937	1.43	17	1,402,473	1.61	17
land	1,698,893	2.09	13	1,632,150	2.07	13	1,853,536	2.13	12
	1,996,102	2.46	12	2,068,491	2.62	12	1,739,785	2.00	13
igan	3,990,085	4.92	9	3,928,413	4.98	9	4,494,234	5.17	9
	2,671,042	3.29	10	2,697,160	3.42	10	3,127,145	3.60	11
uri	5,590,826	6.89	5	5,133,095	6.51	6	6,622,099	7.62	4
ana	262,556	.32	25	244,372	.31	25	245,404	.28	24
aska	702,554	.87	18	688,248	.87	19	1,004,256	1.16	18
a	27,968	.03	39	32,688	.04	39	29,203	.03	38
Hamp.	54,297	.07	38	51,742	.07	38	17,307	.02	39
	5,148,193	6.34	7	4,970,400	6.30	7	6,082,835	7.00	5
York	12,418,181	15.30	1	12,962,358	16.44	1	12,602,086	14.50	1
Car.	148,839	.18	32	151,515	.19	31	104,682	.12	33
	5,870,704	7.23	4	5,358,141	6.79	5	6,047,754	6.96	6
ana	207,522	.26	28	183,801	.23	29	120,266	.14	31
a	295,950	.36	23	266,119	.34	24	368,385	.42	22
	9,094,366	11.21	2	8,590,017	10.89	2	8,989,782	10.34	3
	956,864	1.18	19	1,002,458	1.27	18	827,222	.95	19
	246,763	.30	26	216,991	.28	26	268,412	.31	23
	1,397,247	1.72	15	1,264,408	1.60	15	1,735,956	2.00	14
	171,366	.21	31	171,719	.22	30	168,493	.19	28
ania	271,660	.33	24	282,821	.36	23	209,944	.24	26
	1,530,298	1.89	14	1,345,971	1.71	14	1,596,703	1.84	15
	59,825	.07	37	54,375	.07	37	78,046	.09	35
	8,423,249	10.38	3	8,372,237	10.62	3	10,453,449	12.02	2
ng	98,177	.12	34	93,215	.12	34	102,144	.12	34
	81,144,514	(99.97)		78,860,741	(99.99)		86,936,712	(100.01)	

[fol. 178]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-6

TAXPAID WITHDRAWALS BY STATES

State	1948 Barrels	%	RANK	1949 Barrels	%	RANK	1950 Barrels	
Arizona	150,803	.18	26	141,971	.17	28	160,869	
Calif.	4,056,209	4.77	9	4,142,150	4.91	9	4,336,982	5.
Colorado	623,204	.74	20	739,592	.88	20	788,919	
Conn.	149,291	.18	28	163,518	.19	25	124,282	
Delaware	126,220	.15	29	130,874	.16	29	84,604	
D. C.	107,516	.13	31	97,145	.12	31	107,426	
Florida	390,584	.46	21	349,542	.41	22	333,527	
Georgia	61,526	.07	36	67,409	.08	33	22,125	
Idaho	60,729	.07	37	70,375	.08	32	60,182	
Illinois	5,386,951	6.36	6	4,790,111	5.68	6	4,014,744	4.
Indiana	2,903,722	3.43	11	2,693,327	3.19	11	2,548,667	3.
Iowa	117,660	.14	30	108,984	.13	30	91,562	
Kentucky	1,761,070	2.08	13	1,991,892	2.36	12	1,948,911	2.
Louisiana	1,754,229	2.07	14	1,839,185	2.18	14	1,845,342	2.
Maryland	1,882,792	2.22	12	1,935,348	2.29	13	1,935,970	2.
Mass.	1,601,961	1.89	16	1,563,426	1.85	16	1,388,465	1.
Michigan	4,544,866	5.37	8	4,558,549	5.40	8	4,299,500	5.
Minnesota	2,977,183	3.52	10	2,807,656	3.33	10	2,611,417	3.
Missouri	6,802,244	8.03	4	7,558,445	8.96	4	7,673,719	9.
Montana	203,457	.24	24	194,426	.23	24	184,943	
Nebraska	962,603	1.14	18	940,175	1.11	18	1,006,534	1.
Nevada	28,947	.03	38	27,199	.03	38	22,351	
New Hamp.	19,585	.02	39	27,891	.03	37	3,276	
N. J.	6,318,907	7.46	5	6,956,765	8.25	5	6,114,621	7.
New York	11,780,016	13.91	1	10,195,981	12.09	2	11,233,048	13.
No. Car.	69,374	.08	34	54,422	.06	36	47,717	
Ohio	5,342,204	6.31	7	4,679,812	5.55	7	4,348,802	5.
Oklahoma	65,334	.08	35	52,444	.06	36	49,264	
Oregon	383,750	.45	22	369,061	.44	21	359,221	
Penn.	8,836,615	10.44	3	9,103,088	10.79	3	8,094,880	9.
R. I.	742,992	.88	19	779,938	.92	19	734,075	
Tenn.	240,505	.28	23	203,747	.24	23	161,890	
Texas	1,666,588	1.97	15	1,447,875	1.72	17	1,712,288	2.
Utah	172,919	.20	25	154,393	.18	27	148,950	
Virginia	149,478	.18	27	163,335	.19	26	180,038	
Wash.	1,579,982	1.87	17	1,677,370	1.99	15	1,754,697	2.
W. Va.	72,076	.09	32	65,663	.08	34	62,858	
Wisc.	10,528,409	12.43	2	11,448,463	13.57	1	12,009,271	14.
Wyoming	70,371	.08	33	59,776	.07	35	62,081	
TOTAL	84,674,868	(100.00)		84,351,931	(99.98)		82,705,004	(9

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-7

TAXPAID WITHDRAWALS BY STATES

	1951		RANK	1952		RANK	1953		RANK
	Barrels	%		Barrels	%		Barrels	%	
	177,406	.21	24	182,531	.22	24	200,098	.23	24
f.	4,533,092	5.42	6	4,747,751	5.60	6	5,046,158	5.87	6
ado	774,143	.93	19	853,219	1.01	19	908,423	1.06	19
	118,242	.14	28	117,871	.14	27	111,231	.13	27
are	67,455	.08	31	26,555	.03	37	17,794	.02	37
	116,771	.14	29	95,737	.11	29	86,996	.10	28
da	329,368	.39	22	322,088	.38	22	357,730	.42	21
gia	59,130	.07	33	52,145	.06	32	49,851	.06	32
	51,280	.06	35	48,324	.06	33	41,922	.05	34
ois	3,840,154	4.59	9	3,677,961	4.34	9	4,225,840	4.92	9
na	2,358,609	2.82	11	2,185,537	2.58	11	2,384,044	2.77	11
	78,042	.09	30	61,173	.07	31	61,649	.07	30
cky	1,924,774	2.30	13	1,986,814	2.34	14	2,087,595	2.43	15
iana	1,724,084	2.06	16	2,059,610	2.43	13	2,345,497	2.73	12
land	2,063,879	2.47	12	2,123,194	2.51	12	2,161,473	2.51	13
	1,245,047	1.49	17	1,161,344	1.37	17	1,001,475	1.17	18
gan	4,436,223	5.30	7	4,603,972	5.43	7	4,969,275	5.78	7
sota	2,572,240	3.08	10	2,719,372	3.21	10	3,067,453	3.57	10
uri	7,744,909	9.26	4	7,583,403	8.95	3	8,126,599	9.46	3
na	199,060	.24	23	215,822	.25	23	228,038	.27	23
ska	944,811	1.13	18	863,316	1.02	18	1,031,037	1.20	17
a	18,194	.02	38	12,507	.01	38	8,823	.01	38
	6,333,089	7.57	5	6,955,339	8.21	4	6,957,412	8.10	5
ork	11,356,102	13.58	2	11,542,132	13.62	2	12,107,229	14.09	1
ar.	51,601	.06	34	47,309	.06	34	47,475	.06	33
	4,385,356	5.24	8	4,567,163	5.39	8	4,548,222	5.29	8
na	50,406	.06	36	45,776	.05	35	41,149	.05	35
	343,344	.41	21	324,993	.38	21	259,643	.30	22
	7,925,090	9.48	3	6,945,559	8.20	5	7,397,168	8.61	4
	705,845	.84	20	680,966	.80	20	803,899	.94	20
	144,423	.17	27	107,767	.13	28	81,692	.10	29
	1,832,842	2.19	15	1,829,781	2.16	16	1,939,456	2.26	16
	164,100	.20	26	162,940	.19	25	155,437	.18	26
ia	165,117	.20	25	147,083	.17	26	156,082	.18	25
	1,862,944	2.23	14	1,970,478	2.33	15	2,095,662	2.44	14
	63,576	.08	32	65,611	.08	30	60,738	.07	31
	12,824,119	15.33	1	13,606,635	16.06	1	10,749,014	12.51	2
g	45,918	.05	37	34,078	.04	36	26,192	.03	36
	83,630,785	(99.98)		84,733,856	(99.99)		85,945,471	(100.04)	

TAXPAID WITHDRAWALS BY STATES

State	1954 Barrels	%	RANK	1955 Barrels	%	RANK	1956 Barrels
Arizona	210,182	.25	23	203,944	.24	23	214,343
Calif.	5,711,012	6.86	6	6,178,479	7.28	6	6,326,216
Colorado	1,049,119	1.26	18	1,176,728	1.39	17	1,226,360
Conn.	118,193	.14	27	117,978	.14	27	104,603
Delaware	7,051	.01	36	--	-	-	--
D. C.	53,811	.06	31	40,774	.05	31	3,822
Florida	402,665	.48	21	425,866	.50	21	442,172
Georgia	42,037	.05	33	3,758	*	35	--
Idaho	32,172	.04	35	27,661	.03	33	28,832
Illinois	3,491,634	4.20	9	3,420,409	4.03	10	3,192,320
Indiana	2,181,235	2.62	12	2,344,314	2.76	12	2,218,046
Iowa	61,717	.07	28	77,841	.09	28	53,750
Kentucky	2,095,212	2.52	15	2,100,427	2.47	15	2,060,924
Louisiana	2,421,900	2.91	11	2,411,258	2.84	11	2,393,897
Maryland	2,160,725	2.60	13	2,216,419	2.61	13	2,153,848
Mass.	884,830	1.06	19	861,866	1.02	20	1,009,100
Michigan	4,765,616	5.73	7	4,988,278	5.87	7	5,075,487
Minnesota	3,257,706	3.91	10	3,518,309	4.14	9	3,608,990
Missouri	7,040,083	8.46	4	6,514,056	7.67	5	6,264,044
Montana	242,801	.29	22	244,240	.29	22	246,037
Nebraska	1,053,944	1.27	17	1,071,310	1.26	18	1,060,991
Nevada	5,003	.01	37	4,432	.01	34	4,096
N. J.	6,605,077	7.94	5	7,045,913	8.30	4	7,174,911
N. Y.	11,225,473	13.49	1	11,306,555	13.32	1	11,095,340
No. Car.	45,307	.05	32	66,168	.08	29	52,894
Ohio	4,688,381	5.63	8	4,873,811	5.74	8	4,702,297
Oklahoma	41,620	.05	34	39,768	.05	32	37,963
Oregon	202,932	.24	24	186,538	.22	24	193,714
Penn.	7,264,427	8.73	3	7,345,445	8.65	3	7,164,086
R. I.	837,963	1.01	20	896,892	1.06	19	910,216
Tenn.	55,583	.07	30	--	-	-	--
Texas	2,019,666	2.43	16	2,013,840	2.37	16	2,142,152
Utah	151,372	.18	25	149,015	.18	25	154,057
Virginia	129,237	.16	26	138,948	.16	26	139,063
Wash.	2,115,851	2.54	14	2,116,188	2.49	14	2,311,674
W. Va.	56,816	.07	29	52,676	.06	30	50,420
Wisc.	10,482,752	12.60	2	10,727,842	12.63	2	11,128,076
Wyoming	3,531	*	38	--	-	-	--
TOTAL	83,214,636	(99.99)		84,907,946	(100.00)		84,944,741

* Figure is under .005%.

[181]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-9

TAXPAID WITHDRAWALS BY STATES

te	1957 Barrels	1957 %	1957 RANK	1958 Barrels	1958 %	1958 RANK
ona	188,926	.22	23	195,847	.23	23
ifornia	6,373,610	7.56	5	6,535,083	7.75	6
orado	1,296,314	1.54	17	1,574,774	1.87	17
ecticut	101,667	.12	27	104,395	.12	28
ida	486,479	.58	21	427,149	.51	21
gia	--	*	-	144,537	.17	25
o	31,499	.04	31	31,431	.04	32
inois	3,091,481	3.67	10	3,043,349	3.61	10
ana	2,201,405	2.61	14	2,362,627	2.80	13
	48,467	.06	29	54,864	.07	29
ucky	1,985,473	2.36	16	1,892,895	2.24	16
isiana	2,409,595	2.86	12	2,243,111	2.66	14
land	2,104,813	2.50	15	2,116,041	2.51	15
achusetts	1,090,184	1.29	18	1,132,043	1.34	18
igan	4,779,698	5.67	7	3,914,576	4.64	8
esota	3,586,823	4.26	9	3,744,515	4.44	9
ouri	6,087,567	7.22	6	6,885,174	8.16	4
ana	250,237	.30	22	254,807	.30	22
aska	990,290	1.17	19	1,011,453	1.20	19
da	446	*	32	--	-	-
Jersey	7,154,098	8.49	3	7,314,520	8.67	3
York	11,235,585	13.33	1	10,731,126	12.72	2
	4,462,132	5.29	8	4,382,124	5.19	7
homa	35,600	.04	30	31,959	.04	31
on	179,206	.21	24	186,554	.22	24
sylvania	7,028,593	8.34	4	6,714,450	7.96	5
e Island	906,172	1.08	20	888,147	1.05	20
a	2,398,544	2.85	13	2,454,542	2.91	12
	148,038	.18	26	140,468	.17	26
inia	149,036	.18	25	133,068	.16	27
ington	2,422,720	2.87	11	2,631,047	3.12	11
Virginia	49,316	.06	28	45,581	.05	30
onsin	11,014,566	13.07	2	11,034,403	13.08	1
L	84,288,580	(100.02)		84,356,660	(100.00)	

gure is under .005%.

[fol. 182] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-10

TAXPAID WITHDRAWALS BY STATES

State	1959 Barrels	1959 %	RANK	1960 Barrels	1960 %
Arizona	167,013	.19	25	166,117	.19
California	6,966,129	7.96	5	6,797,635	7.74
Colorado	1,810,366	2.07	17	2,060,008	2.34
Connecticut	104,324	.12	28	94,283	.11
Florida	1,441,519	1.65	18	1,747,535	1.99
Georgia	256,506	.29	22	359,207	.41
Idaho	28,154	.03	32	5,565	.01
Illinois	3,608,746	4.12	10	3,687,145	4.20
Indiana	2,141,398	2.45	13	2,160,114	2.46
Iowa	49,610	.06	29	55,989	.06
Kentucky	1,898,572	2.17	16	1,805,343	2.06
Louisiana	2,133,522	2.44	14	2,170,130	2.47
Maryland	2,105,184	2.40	15	1,959,455	2.23
Massachusetts	1,314,002	1.50	19	1,393,055	1.59
Michigan	4,207,657	4.81	8	4,247,397	4.83
Minnesota	3,736,378	4.27	9	3,843,238	4.37
Missouri	7,489,342	8.55	4	7,459,005	8.49
Montana	242,508	.28	23	241,119	.27
Nebraska	1,019,829	1.16	20	1,035,102	1.18
New Jersey	7,613,551	8.70	3	7,833,652	8.92
New York	10,952,622	12.51	1	10,591,430	12.06
Ohio	4,457,830	5.09	7	4,343,704	4.94
Oklahoma	30,484	.03	31	50,970	.06
Oregon	177,427	.20	24	187,820	.21
Pennsylvania	6,843,294	7.82	6	6,639,771	7.56
Rhode Island	904,843	1.03	21	893,726	1.02
Texas	2,638,352	3.01	12	2,774,104	3.16
Utah	126,339	.14	27	133,278	.15
Virginia	127,575	.15	26	130,129	.15
Washington	2,801,421	3.20	11	2,886,120	3.29
West Virginia	45,402	.05	30	47,484	.05
Wisconsin	10,119,075	11.56	2	10,056,894	11.45
TOTAL	87,558,974	(100.01)		87,856,524	(100.01)

Joint Exhibit No. JX-11

TAXPAID WITHDRAWALS BY STATES

1961

State	Barrels	%	Rank
Arizona	161,311	.18	26
California	6,679,169	7.51	5
Colorado	2,451,444	2.76	13
Connecticut	91,493	.10	28
Florida	1,823,424	2.05	17
Georgia	395,668	.44	22
Illinois	4,276,137	4.81	7
Indiana	2,229,843	2.51	14
Iowa	30,896	.03	31
Kentucky	1,639,672	1.84	18
Louisiana	2,218,315	2.49	15
Maryland	2,134,637	2.40	16
Massachusetts	1,398,158	1.57	19
Michigan	4,068,815	4.57	9
Minnesota	3,796,142	4.27	10
Missouri	7,218,217	8.11	4
Montana	225,968	.25	24
Nebraska	1,051,500	1.18	21
New Jersey	7,849,398	8.82	3
New York	10,538,357	11.84	1
North Dakota	9,936	.01	32
Ohio	4,162,562	4.68	8
Oklahoma	55,481	.06	29
Oregon	216,192	.24	25
Pennsylvania	6,547,695	7.36	6
Rhode Island	1,090,755	1.23	20
Texas	2,829,484	3.18	12
Utah	222,663	.25	23
Virginia	127,796	.14	27
Washington	3,006,514	3.38	11
W. Virginia	45,214	.05	30
Wisconsin	10,383,561	11.67	2
TOTAL	88,976,417	99.98	

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-12

CONSUMPTION BY STATES

State	1934 Barrels	%	RANK	1935 Barrels	%	RANK	1936 Barrels	%
Arizona	68,003	.19	34	106,243	.26	34	142,690	.3
Arkansas				116,081	.28	33	246,904	.5
Calif.	1,938,640	5.41	6	2,044,024	4.93	7	2,535,128	5.1
Colorado	104,419	.29	30	265,664	.64	25	339,882	.6
Delaware	65,145	.18	35	79,747	.19	38	100,199	.2
Florida	216,647	.60	23	283,605	.68	23	412,403	.8
Georgia	--	-	-	--	-	-	295,845	.6
Idaho	109,598	.31	28	137,076	.33	31	154,258	.3
Illinois	3,472,901	9.68	3	4,088,881	9.86	3	4,851,281	9.9
Indiana	856,002	2.39	12	940,414	2.27	12	1,147,853	2.3
Iowa	690,797	1.93	15	816,300	1.97	13	941,039	1.9
Kentucky	521,939	1.46	16	567,959	1.37	16	714,534	1.4
Louisiana	428,387	1.19	17	420,169	1.01	17	464,259	.9
Maine	109,103	.30	29	232,205	.56	27	293,918	.6
Mass.	1,389,503	3.87	10	1,622,688	3.91	9	1,754,637	3.5
Michigan	2,608,638	7.27	5	3,065,073	7.39	4	3,416,573	6.9
Minnesota	1,430,213	3.99	9	1,538,345	3.71	10	1,791,073	3.6
Miss.	118,059	.33	27	92,913	.22	37	126,374	.2
Missouri	1,149,442	3.21	11	1,224,561	2.95	11	1,530,648	3.1
Montana	--	-	-	241,446	.58	26	270,633	.5
Nebraska	296,124	.83	19	401,708	.97	19	641,461	1.3
Nevada	--	-	-	--	-	-	66,016	.1
N. J.	1,822,063	5.08	7	2,217,981	5.35	6	2,540,922	5.1
N. M.	50,000	.14	36	60,000	.14	39	75,000	.1
N. Y.	6,260,629	17.46	1	7,195,197	17.35	1	7,774,631	15.8
No. Car.	--	-	-	--	-	-	230,261	.4
No. Dak.	201,472	.56	24	212,302	.51	28	234,633	.4
Ohio	2,762,759	7.70	4	2,955,004	7.12	5	3,536,585	7.2
Oklahoma	179,726	.50	25	195,774	.47	29	337,094	.6
Oregon	--	-	-	376,225	.91	20	400,149	.8
Penn.	4,456,611	12.43	2	4,751,640	11.46	2	5,410,297	11.0
R. I.	291,544	.81	20	360,216	.87	21	397,096	.8
So. Car.	72,524	.20	33	94,320	.23	36	155,204	.3
So. Dak.	140,962	.39	26	171,383	.41	30	205,033	.4
Tenn.	219,606	.61	22	354,097	.85	22	416,871	.8
Texas	701,660	1.96	14	752,239	1.81	14	1,187,066	2.4
Utah	99,271	.28	31	120,007	.29	32	125,898	.2
Vermont	76,403	.21	32	98,883	.24	35	111,691	.2
Virginia	227,184	.63	21	281,218	.68	24	--	-
Wash.	723,098	2.02	13	670,694	1.62	15	705,525	1.4
W. Va.	300,286	.84	18	417,832	1.01	18	569,539	1.1
Wisc.	1,702,787	4.75	8	1,906,544	4.60	8	2,195,411	4.4
Wyoming	--	-	-	--	-	-	82,357	.1
TOTAL	35,862,145	(100.00)		41,476,658	(100.00)		48,928,871	(99.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-13

CONSUMPTION BY STATES

1937		RANK	1938		RANK	1939		RANK
Barrels	%		Barrels	%		Barrels	%	
--	-	-	184,231	.37	36	198,131	.38	35
148,219	.28	37	127,642	.25	42	122,603	.23	43
265,293	.51	29	245,593	.49	31	194,103	.37	37
2,606,335	4.99	7	2,429,399	4.82	7	2,488,916	4.76	7
360,427	.69	27	328,278	.65	27	351,378	.67	26
--	-	-	936,129	1.86	15	971,380	1.86	15
108,909	.21	40	99,206	.20	45	106,719	.20	46
--	-	-	--	-	-	345,998	.66	27
449,210	.86	21	452,288	.90	21	483,675	.92	21
373,994	.72	25	182,122	.36	37	178,157	.34	38
158,242	.30	35	144,674	.29	39	144,794	.28	41
4,885,010	9.36	3	4,612,982	9.16	3	4,726,813	9.04	3
1,164,743	2.23	13	1,046,452	2.08	14	1,086,225	2.08	14
933,690	1.79	15	896,280	1.78	16	887,939	1.70	16
--	-	-	326,296	.65	28	311,437	.60	30
712,604	1.37	16	580,719	1.15	17	665,683	1.27	17
502,291	.96	20	500,107	.99	19	519,616	.99	19
242,056	.46	31	217,955	.43	33	229,058	.44	33
1,112,189	2.13	14	1,069,605	2.12	13	1,093,389	2.09	13
1,874,136	3.59	9	1,849,802	3.67	9	1,888,709	3.61	9
3,649,894	6.99	5	3,149,636	6.25	5	3,242,177	6.20	5
1,827,733	3.50	10	1,768,677	3.51	10	1,740,434	3.33	10
146,701	.28	38	116,168	.23	43	117,386	.22	44
1,461,980	2.80	12	1,505,423	2.99	11	1,515,077	2.90	12
252,071	.48	30	237,575	.47	32	243,611	.47	32
510,766	.98	19	442,300	.88	22	456,444	.87	23
66,303	.13	43	59,041	.12	48	62,711	.12	49
--	-	-	192,030	.38	34	214,139	.41	34
2,843,515	5.45	6	2,661,116	5.28	6	2,732,702	5.22	6
68,629	.13	42	65,328	.13	47	68,539	.13	48
8,427,345	16.15	1	7,986,912	15.85	1	8,269,222	15.81	1
268,934	.52	28	264,043	.52	30	301,887	.58	31
186,417	.36	32	167,121	.33	38	162,954	.31	40
3,725,028	7.14	4	3,263,804	6.48	4	3,404,815	6.51	4
410,151	.79	23	363,091	.72	25	334,813	.64	28
375,106	.72	24	345,871	.69	26	360,424	.69	25
5,513,795	10.56	2	5,044,690	10.01	2	5,332,118	10.19	2
433,442	.83	22	415,923	.83	24	415,387	.79	24
178,749	.34	33	144,494	.29	40	196,507	.38	36
176,822	.34	34	190,830	.38	35	167,371	.3	39
368,504	.71	26	317,884	.63	29	332,759	.64	29
1,517,459	2.91	11	1,484,094	2.95	12	1,557,444	2.98	11
157,018	.30	36	139,717	.28	41	144,676	.28	42
120,867	.23	39	108,354	.22	44	110,516	.21	45
--	-	-	435,547	.86	23	468,270	.90	22
665,951	1.28	17	569,154	1.13	18	592,200	1.13	18
563,300	1.08	18	490,599	.97	20	514,202	.98	20
2,295,978	4.40	8	2,142,481	4.25	8	2,174,457	4.16	8
83,799	.16	41	83,702	.17	46	80,079	.15	47
52,193,605	(100.01)		50,385,365	(100.02)		52,308,044	(100.01)	

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IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-14

CONSUMPTION BY STATES

State	1940 Barrels	%	RANK	1941 Barrels	%	RANK	1942 Barrels	%
Alabama	213,409	.42	34	302,059	.53	32	284,865	.
Arizona	126,057	.25	43	145,823	.26	41	225,194	.
Arkansas	170,157	.33	37	221,857	.39	38	318,841	.
Calif.	2,460,459	4.80	7	2,683,100	4.71	7	3,441,210	5.
Colorado	337,991	.66	28	369,659	.65	29	454,726	.
Conn.	971,840	1.90	15	1,082,994	1.90	15	1,140,359	1.
Delaware	110,560	.22	46	125,849	.22	45	145,513	.
D. C.	360,085	.70	27	421,383	.74	28	504,058	.
Florida	493,336	.96	22	590,108	1.04	22	784,117	1.
Georgia	172,282	.34	36	261,531	.46	35	358,260	.
Idaho	144,287	.28	40	138,919	.24	43	157,106	.
Illinois	4,527,010	8.83	3	4,707,965	8.26	3	4,906,909	7.
Indiana	1,119,051	2.18	13	1,246,428	2.19	14	1,474,513	2.
Iowa	862,695	1.68	16	844,410	1.48	17	882,645	1.
Kansas	306,847	.60	30	330,564	.58	31	407,960	.
Kentucky	635,275	1.24	17	822,864	1.44	18	870,451	1.
Louisiana	528,185	1.03	21	657,905	1.15	20	839,583	1.
Maine	232,153	.45	33	271,258	.48	34	340,192	.
Maryland	1,118,437	2.18	14	1,340,452	2.35	13	1,529,321	2.
Mass.	1,864,054	3.64	9	2,108,986	3.70	9	2,324,265	3.
Michigan	3,196,623	6.24	5	3,586,711	6.30	5	3,901,139	5.
Minnesota	1,571,053	3.07	10	1,353,643	2.38	12	1,230,506	1.
Miss.	110,656	.22	45	177,193	.31	39	183,643	.
Missouri	1,454,090	2.84	12	1,583,271	2.78	11	1,748,819	2.
Montana	248,008	.48	32	233,774	.41	36	223,549	.
Nebraska	424,234	.83	23	432,670	.76	26	484,853	.
Nevada	64,530	.13	49	66,701	.12	49	100,976	.
N. H.	208,969	.41	35	228,098	.40	37	253,883	.
N. J.	2,650,604	5.17	6	2,882,555	5.06	6	3,023,164	4.
N. M.	69,197	.14	48	72,884	.13	48	106,129	.
N. Y.	7,965,520	15.54	1	8,519,914	14.95	1	8,882,059	14.
No. Car.	298,957	.58	31	458,446	.80	25	627,720	1.
No. Dak.	155,423	.30	39	148,892	.26	40	151,741	.
Ohio	3,315,256	6.47	4	3,660,284	6.42	4	4,033,644	6.
Oklahoma	312,358	.61	29	348,840	.61	30	495,493	.
Oregon	370,358	.72	25	427,650	.75	27	602,985	.
Penn.	5,231,142	10.21	2	5,975,803	10.49	2	6,240,195	9.
R. I.	409,746	.80	24	473,012	.83	24	521,853	.
So. Car.	169,066	.33	38	283,235	.50	33	321,456	.
So. Dak.	140,285	.27	42	128,106	.22	44	135,578	.
Tenn.	364,062	.71	26	513,133	.90	23	697,879	1.
Texas	1,558,851	3.04	11	1,900,831	3.34	10	2,283,420	3.
Utah	141,620	.28	41	144,498	.25	42	213,494	.
Vermont	110,717	.22	44	123,541	.22	46	121,000	.
Virginia	580,000	1.13	19	906,000	1.59	16	982,000	1.
Wash.	627,956	1.23	18	736,028	1.29	19	968,405	1.
W. Va.	550,167	1.07	20	653,094	1.15	21	765,716	1.
Wisc.	2,114,727	4.13	8	2,201,172	3.86	8	2,196,510	3.
Wyoming	75,929	.15	47	77,146	.14	47	79,720	.
TOTAL	51,244,274	(100.01)		56,971,239	(99.99)		62,967,617	(10

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-15

CONSUMPTION BY STATES

1943 Barrels	%	RANK	1944 Barrels	%	RANK	1945 Barrels	%	RANK
327,341	.47	34	364,660	.48	34	408,306	.51	34
241,025	.34	39	271,067	.35	39	286,778	.36	39
286,638	.41	36	299,876	.39	36	277,863	.35	40
4,083,522	5.80	6	4,689,155	6.13	5	5,189,743	6.51	5
507,597	.72	31	574,072	.75	31	518,822	.65	32
1,213,666	1.72	15	1,297,383	1.70	15	1,311,132	1.64	15
167,888	.24	43	187,430	.25	45	189,075	.24	45
575,590	.82	28	578,456	.76	30	603,584	.76	30
887,879	1.26	21	931,036	1.22	21	1,085,135	1.36	19
480,653	.68	32	584,517	.76	29	613,735	.77	29
170,152	.24	42	201,426	.26	43	230,955	.29	42
5,342,254	7.59	3	5,783,991	7.56	3	5,860,754	7.35	3
1,761,597	2.50	12	1,909,045	2.50	12	1,951,822	2.45	12
1,018,892	1.45	19	1,090,597	1.43	18	1,151,525	1.44	18
533,976	.76	30	564,048	.74	32	564,285	.71	31
1,099,918	1.56	17	1,024,750	1.34	19	1,050,893	1.32	21
967,157	1.37	20	973,494	1.27	20	1,051,993	1.32	20
376,261	.53	33	419,287	.55	33	437,340	.55	33
1,534,024	2.18	13	1,616,095	2.11	14	1,649,101	2.07	13
2,579,384	3.67	8	2,936,041	3.84	8	3,003,701	3.77	8
4,238,474	6.02	5	4,470,488	5.84	6	4,646,375	5.83	6
1,404,807	2.00	14	1,659,912	2.17	13	1,536,179	1.93	14
269,061	.38	37	275,730	.36	38	342,493	.43	36
1,874,466	2.66	11	1,945,729	2.54	11	2,070,607	2.60	11
231,543	.33	41	267,902	.35	40	288,229	.36	38
590,534	.84	27	647,714	.85	27	661,851	.83	27
107,882	.15	48	106,189	.14	48	115,323	.14	47
264,635	.38	38	287,161	.38	37	304,982	.38	37
3,213,654	4.57	7	3,521,778	4.60	7	3,571,911	4.48	7
131,591	.19	47	136,681	.18	47	171,686	.22	46
9,884,521	14.05	1	11,004,844	14.39	1	11,088,384	13.90	1
720,706	1.02	25	752,021	.98	23	782,074	.98	25
149,982	.21	45	212,446	.28	42	212,547	.27	44
4,692,592	6.67	4	5,137,812	6.72	4	5,203,204	6.52	4
728,171	1.03	24	750,947	.98	24	787,607	.99	24
663,459	.94	26	687,597	.90	26	758,281	.95	26
6,968,344	9.90	2	7,827,531	10.23	2	8,598,556	10.78	2
567,771	.81	29	616,353	.81	28	632,966	.79	28
309,402	.44	35	343,471	.45	35	371,565	.47	35
165,648	.24	44	193,285	.25	44	215,022	.27	43
756,179	1.07	23	749,151	.98	25	812,910	1.02	23
2,370,318	3.37	10	2,376,284	3.11	10	2,618,191	3.28	10
240,646	.34	40	253,463	.33	41	267,406	.34	41
139,051	.20	46	144,478	.19	46	92,901	.12	49
1,208,845	1.72	16	1,148,559	1.50	17	1,239,749	1.55	17
1,034,029	1.47	18	1,178,664	1.54	16	1,289,277	1.62	16
772,178	1.10	22	811,553	1.06	22	824,793	1.03	22
2,425,135	3.45	9	2,584,884	3.38	9	2,710,444	3.40	9
88,497	.13	49	101,030	.13	49	100,950	.13	48
70,367,841	(99.99)		76,490,083	(100.01)		79,753,005	(100.03)	

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IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-16

CONSUMPTION BY STATES

State	1946 Barrels	%	RANK	1947 Barrels	%	RANK	1948 Barrels	%
Alabama	340,559	.42	35	416,571	.49	34	408,213	.
Arizona	285,433	.36	39	342,778	.40	38	343,579	.
Arkansas	258,060	.32	41	289,570	.34	41	279,287	.
Calif.	4,883,064	6.07	5	5,470,401	6.42	5	5,157,742	6.
Colorado	551,954	.69	30	619,302	.73	30	667,411	.
Conn.	1,390,873	1.73	15	1,366,967	1.60	16	1,328,583	1.
Delaware	168,972	.21	46	182,677	.21	47	184,632	.
D. C.	531,990	.66	31	597,073	.70	31	584,803	.
Florida	1,022,748	1.27	20	1,046,443	1.23	21	1,107,776	1.
Georgia	525,509	.65	32	538,659	.63	32	528,619	.
Idaho	233,419	.29	42	271,576	.32	44	261,836	.
Illinois	6,174,552	7.68	3	6,476,127	7.60	3	6,331,278	7.
Indiana	1,838,509	2.29	12	2,184,897	2.56	12	2,139,265	2.
Iowa	1,155,683	1.44	18	1,376,693	1.62	15	1,311,223	1.
Kansas	565,183	.70	29	738,745	.87	27	744,622	.
Kentucky	1,105,306	1.37	19	1,139,050	1.34	19	1,146,089	1.
Louisiana	1,017,490	1.27	21	1,226,802	1.44	18	1,184,568	1.
Maine	426,011	.53	33	445,429	.52	33	423,891	.
Maryland	1,597,634	1.99	13	1,698,288	1.99	14	1,654,209	1.
Mass.	3,102,512	3.86	8	3,086,482	3.62	9	2,936,889	3.
Michigan	4,652,611	5.79	6	5,113,109	6.00	6	5,063,194	6.
Minnesota	1,596,304	1.99	14	1,864,699	2.19	13	1,873,000	2.
Miss.	305,513	.38	37	331,303	.39	39	335,016	.
Missouri	2,006,118	2.50	11	2,431,599	2.85	11	2,396,551	2.
Montana	290,697	.36	38	352,202	.41	36	344,858	.
Nebraska	638,596	.79	27	756,199	.89	26	722,538	.
Nevada	116,031	.14	48	120,110	.14	49	107,298	.
N. H.	323,181	.40	36	348,015	.41	37	341,681	.
N. J.	3,621,566	4.51	7	3,733,402	4.38	7	3,685,766	4.
N. M.	154,073	.19	47	194,878	.23	45	210,108	.
N. Y.	11,251,362	14.00	1	11,510,384	13.51	1	11,270,919	13.
No. Car.	891,252	1.11	22	825,587	.97	25	672,508	.
No. Dak.	209,154	.26	43	295,548	.35	40	284,357	.
Ohio	4,914,384	6.11	4	5,671,588	6.66	4	5,707,250	6.
Oklahoma	676,792	.84	26	728,285	.85	28	684,989	.
Oregon	695,057	.86	25	862,811	1.01	24	873,719	1.
Penn.	9,680,677	12.04	2	8,135,841	9.55	2	8,482,566	10.
R. I.	613,151	.76	28	641,727	.75	29	625,529	.
So. Car.	392,818	.49	34	376,435	.44	35	331,831	.
So. Dak.	203,526	.25	44	282,212	.33	43	256,566	.
Tenn.	761,327	.95	24	899,451	1.06	22	936,002	1.
Texas	2,594,504	3.23	10	3,303,869	3.88	8	3,366,478	4.
Utah	271,162	.34	40	284,053	.33	42	266,573	.
Vermont	175,454	.22	45	185,556	.22	46	188,668	.
Virginia	1,274,239	1.59	16	1,082,825	1.27	20	1,022,259	1.
Wash.	1,200,739	1.49	17	1,270,416	1.49	17	1,229,629	1.
W. Va.	791,826	.99	23	892,185	1.05	23	821,989	.
Wisc.	2,805,819	3.49	9	3,059,738	3.59	10	3,097,385	3.
Wyoming	102,260	.13	49	125,772	.15	48	137,037	.
TOTAL	80,385,654	(100.00)		85,194,329	(99.98)		84,060,779	(99

CONSUMPTION BY STATES

	1949		RANK	1950		RANK	1951		RANK
	Barrels	%		Barrels	%		Barrels	%	
	387,611	.47	34	420,677	.51	34	487,738	.59	33
	331,549	.40	37	365,371	.44	36	397,679	.48	35
	319,848	.39	38	302,623	.37	40	329,849	.40	38
	5,084,684	6.14	6	5,241,420	6.35	5	5,426,778	6.54	5
	618,077	.75	29	647,873	.78	26	655,598	.79	26
	1,347,561	1.63	15	1,320,043	1.60	15	1,334,872	1.61	15
	193,064	.23	46	200,031	.24	46	213,286	.26	46
	599,086	.72	30	588,669	.71	29	609,988	.73	31
	1,120,051	1.35	20	1,204,708	1.46	18	1,284,110	1.55	17
	492,216	.59	32	531,430	.64	32	610,911	.74	30
	309,940	.37	41	274,807	.33	41	263,505	.32	41
	6,203,140	7.49	3	6,034,659	7.31	3	5,961,912	7.18	3
	2,100,833	2.54	12	2,095,020	2.54	12	2,157,641	2.60	12
	1,306,673	1.58	16	1,254,487	1.52	17	1,147,641	1.38	20
	664,972	.80	26	570,581	.69	31	562,917	.68	32
	1,205,195	1.45	18	1,166,650	1.41	19	1,188,100	1.43	19
	1,177,501	1.42	19	1,125,339	1.36	20	1,120,108	1.35	21
	414,741	.50	33	424,086	.51	33	425,563	.51	34
	1,721,830	2.08	14	1,766,874	2.14	14	1,872,216	2.25	13
	2,973,328	3.59	10	2,942,850	3.57	10	2,805,564	3.38	10
	5,131,772	6.19	5	5,071,693	6.14	6	5,082,090	6.12	6
	1,856,382	2.24	13	1,800,856	2.18	13	1,724,765	2.08	14
	318,856	.38	39	352,360	.43	37	312,683	.38	39
	2,326,466	2.81	11	2,271,690	2.75	11	2,273,184	2.74	11
	365,051	.44	35	366,250	.44	35	355,289	.43	36
	713,026	.86	25	723,527	.88	24	689,874	.83	24
	107,877	.13	49	120,532	.15	49	126,517	.15	49
	345,047	.42	36	340,553	.41	38	339,150	.41	37
	3,794,431	4.58	7	3,653,192	4.43	8	3,682,119	4.43	8
	215,980	.26	45	240,701	.29	44	260,562	.31	42
	11,295,523	13.63	1	11,064,380	13.41	1	10,827,191	13.04	1
	543,702	.66	31	577,775	.70	30	654,999	.79	27
	279,650	.34	42	246,192	.30	43	256,720	.31	43
	5,650,823	6.82	4	5,437,946	6.59	4	5,511,118	6.64	4
	640,933	.77	27	619,875	.75	27	617,547	.74	29
	874,356	1.06	22	921,420	1.12	22	925,254	1.11	22
	7,932,712	9.58	2	7,693,618	9.32	2	7,738,161	9.32	2
	634,085	.77	28	617,424	.75	28	617,840	.74	28
	317,067	.38	40	323,682	.39	39	292,846	.35	40
	253,221	.31	43	237,825	.29	45	219,079	.26	45
	871,726	1.05	23	918,667	1.11	23	843,698	1.02	23
	3,247,715	3.92	8	3,797,567	4.60	7	4,108,604	4.95	7
	245,908	.30	44	251,631	.30	42	242,093	.29	44
	186,399	.22	47	181,767	.22	47	182,256	.22	47
	983,552	1.19	21	1,082,269	1.31	21	1,231,846	1.48	18
	1,246,815	1.50	17	1,286,256	1.56	16	1,313,445	1.58	16
	725,310	.88	24	675,816	.82	25	675,071	.81	25
	3,031,960	3.66	9	3,043,925	3.69	9	2,945,593	3.55	9
	137,258	.17	48	138,609	.17	48	129,542	.16	48
	82,845,503	(100.01)		82,536,196	(99.98)		83,035,112	(100.01)	

[fol. 190]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-18

CONSUMPTION BY STATES

State	1952 Barrels	%	RANK	1953 Barrels	%	RANK	1954 Barrels	%
Alabama	483,854	.57	33	488,856	.57	33	454,687	.55
Arizona	432,621	.51	35	445,881	.52	34	444,155	.54
Arkansas	333,842	.40	39	330,754	.39	39	319,104	.39
Calif.	5,661,688	6.70	4	5,879,647	6.90	4	5,841,774	7.08
Colorado	689,929	.82	25	562,663	.66	32	651,974	.79
Conn.	1,355,650	1.61	16	1,369,452	1.61	16	1,296,230	1.57
Delaware	226,035	.27	46	229,693	.27	45	223,072	.27
D. C.	588,037	.70	32	566,198	.66	31	523,518	.63
Florida	1,356,415	1.61	15	1,437,332	1.69	15	1,459,812	1.77
Georgia	646,411	.77	27	614,989	.72	28	599,212	.73
Idaho	264,759	.31	43	266,652	.31	43	254,928	.31
Illinois	6,023,629	7.13	3	6,114,368	7.17	3	5,871,151	7.12
Indiana	2,134,014	2.53	12	2,251,667	2.64	12	2,148,994	2.61
Iowa	1,228,167	1.45	19	1,215,130	1.43	19	1,233,353	1.50
Kansas	610,734	.72	31	621,572	.73	27	629,859	.76
Kentucky	1,219,736	1.44	20	1,136,073	1.33	21	1,226,382	1.49
Louisiana	1,140,741	1.35	21	1,182,576	1.39	20	1,191,031	1.44
Maine	433,538	.51	34	443,888	.52	35	414,159	.50
Maryland	1,868,825	2.21	13	1,883,972	2.21	13	1,811,229	2.20
Mass.	2,827,713	3.35	10	2,814,654	3.30	10	2,640,562	3.20
Michigan	5,155,887	6.11	6	5,391,989	6.33	6	5,193,144	6.30
Minnesota	1,743,056	2.06	14	1,754,473	2.06	14	1,719,315	2.08
Miss.	325,268	.39	40	330,439	.39	40	316,027	.38
Missouri	2,311,819	2.74	11	2,328,975	2.73	11	2,347,586	2.85
Montana	378,313	.45	37	385,853	.45	37	385,233	.47
Nebraska	704,733	.83	24	726,942	.85	24	717,555	.87
Nevada	140,978	.17	48	158,551	.19	48	171,612	.21
N. H.	349,745	.41	38	349,551	.41	38	333,426	.40
N. J.	3,727,159	4.41	8	3,821,957	4.48	8	3,729,183	4.52
N. M.	273,470	.32	41	274,374	.32	41	277,276	.34
N. Y.	10,836,793	12.83	1	10,889,925	12.78	1	10,398,995	12.61
No. Car.	631,489	.75	28	636,462	.75	26	600,553	.73
No. Dak.	266,559	.32	42	270,328	.32	42	267,522	.32
Ohio	5,631,322	6.67	5	5,666,157	6.65	5	5,530,454	6.71
Oklahoma	624,705	.74	29	598,505	.70	30	596,993	.72
Oregon	886,771	1.05	22	826,462	.97	22	752,712	.91
Penn.	7,873,471	9.32	2	7,835,161	9.19	2	7,295,354	8.85
R. I.	620,895	.74	30	611,778	.72	29	576,298	.70
So. Car.	399,091	.47	36	389,391	.46	36	376,146	.46
So. Dak.	235,446	.28	44	235,947	.28	44	239,394	.29
Tenn.	821,777	.97	23	811,271	.95	23	778,301	.94
Texas	4,122,381	4.88	7	4,198,779	4.93	7	4,150,580	5.03
Utah	232,906	.28	45	224,429	.26	46	217,393	.26
Vermont	182,917	.22	47	193,539	.23	47	177,140	.21
Virginia	1,267,983	1.50	18	1,293,592	1.52	18	1,078,100	1.31
Wash.	1,341,191	1.59	17	1,329,214	1.56	17	1,276,572	1.55
W. Va.	658,604	.78	26	638,422	.75	25	588,920	.71
Wisc.	3,039,323	3.60	9	3,076,497	3.61	9	3,014,087	3.65
Wyoming	132,687	.16	49	132,886	.16	49	134,408	.16
TOTAL	84,443,077	(100.00)		85,237,866	(100.02)		82,475,465	(99.

CONSUMPTION BY STATES

	1955		RANK	1956		RANK	1957		RANK
	Barrels	%		Barrels	%		Barrels	%	
a	468,514	.56	34	489,607	.58	34	490,635	.59	34
a	472,493	.56	33	498,947	.59	33	529,733	.63	32
as	323,372	.38	39	347,371	.41	38	330,996	.40	39
	6,067,619	7.20	3	6,304,701	7.44	3	6,559,636	7.83	3
do	669,762	.79	25	677,841	.80	25	673,050	.80	25
	1,325,041	1.57	16	1,322,348	1.56	16	1,327,746	1.58	16
re	235,600	.28	45	239,914	.28	44	223,130	.27	44
	520,616	.62	32	505,442	.60	32	490,998	.59	33
a	1,589,681	1.89	15	1,727,217	2.04	14	1,919,931	2.29	13
a	609,739	.72	28	620,721	.73	28	590,370	.70	29
	248,545	.29	43	260,010	.31	42	251,520	.30	42
ia	5,977,276	7.09	4	6,034,342	7.12	4	5,944,568	7.09	4
a	2,199,132	2.61	12	2,220,968	2.62	12	2,176,030	2.60	12
	1,268,174	1.51	18	1,248,241	1.47	21	1,217,357	1.45	20
	621,725	.74	27	629,567	.74	27	601,816	.72	28
ky	921,258	1.09	21	1,287,881	1.52	18	1,079,168	1.29	21
ana	1,192,559	1.42	19	1,248,880	1.47	20	1,291,308	1.54	18
	445,908	.53	35	437,421	.52	35	429,239	.51	35
nd	1,883,857	2.24	13	1,939,419	2.29	13	1,899,990	2.27	14
	2,683,320	3.18	10	2,653,668	3.13	10	2,651,327	3.16	10
an	5,427,158	6.44	6	5,384,692	6.35	6	5,219,352	6.23	6
ota	1,736,127	2.06	14	1,711,763	2.02	15	1,707,067	2.04	15
	313,766	.37	40	305,536	.36	41	304,894	.36	41
i	2,321,661	2.76	11	2,307,676	2.72	11	2,209,373	2.64	11
	385,873	.46	37	404,539	.48	36	402,355	.48	36
a	739,200	.88	24	726,093	.86	24	689,842	.82	24
	180,435	.21	48	177,878	.21	48	180,542	.22	48
	349,331	.41	38	344,157	.41	39	343,028	.41	38
	3,859,054	4.58	8	3,786,853	4.47	8	3,782,243	4.51	8
	278,815	.33	41	308,350	.36	40	314,800	.38	40
	10,670,177	12.66	1	10,454,904	12.33	1	10,421,700	12.44	1
	622,546	.74	26	630,001	.74	26	619,239	.74	27
	257,342	.31	42	259,238	.31	43	251,291	.30	43
	5,581,850	6.62	5	5,565,256	6.57	5	5,358,314	6.40	5
i	599,891	.71	30	609,338	.72	30	584,221	.70	30
	761,901	.90	22	774,730	.91	23	740,493	.88	23
	7,569,792	8.98	2	7,374,701	8.70	2	7,240,360	8.64	2
	584,166	.69	31	577,342	.68	31	572,125	.68	31
	402,415	.48	36	393,983	.46	37	379,847	.45	37
	235,768	.28	44	224,706	.27	46	215,230	.26	46
	757,751	.90	23	780,239	.92	22	741,932	.89	22
	4,177,633	4.96	7	4,136,805	4.88	7	4,029,410	4.81	7
	224,406	.27	46	228,470	.27	45	218,534	.26	45
	186,385	.22	47	185,570	.22	47	187,130	.22	47
	1,185,569	1.41	20	1,273,998	1.50	19	1,265,180	1.51	19
	1,290,876	1.53	17	1,307,346	1.54	17	1,305,022	1.56	17
	600,412	.71	29	612,759	.72	29	623,985	.74	26
	3,099,655	3.68	9	3,094,919	3.65	9	3,066,673	3.66	9
	133,038	.16	49	134,757	.16	49	126,879	.15	49
	84,257,184	(99.98)		84,771,105	(100.01)		83,779,609	(99.99)	

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-20

CONSUMPTION BY STATES

State	1958 Barrels	%	RANK	1959 Barrels	%	RANK	196 Barrels
Alabama	502,512	.60	33	508,537	.59	34	544,180
Arizona	594,270	.71	30	637,263	.73	29	675,887
Arkansas	340,443	.41	39	365,028	.42	39	373,477
Calif.	7,002,755	8.36	3	7,433,512	8.56	2	7,496,905
Colorado	716,241	.86	25	735,009	.85	25	770,566
Conn.	1,271,985	1.52	19	1,307,235	1.50	19	1,277,521
Delaware	223,003	.27	46	230,096	.26	45	228,599
D. C.	475,646	.57	34	509,161	.59	33	510,771
Florida	1,930,244	2.30	13	2,072,960	2.39	13	2,121,249
Georgia	598,663	.71	29	654,792	.75	28	698,187
Idaho	264,440	.32	42	264,858	.30	43	267,461
Illinois	5,804,309	6.93	4	5,796,136	6.67	4	6,095,318
Indiana	2,126,174	2.54	12	2,244,244	2.58	11	2,260,446
Iowa	1,237,372	1.48	20	1,276,788	1.47	20	1,295,265
Kansas	610,725	.73	28	623,907	.72	30	630,155
Kentucky	1,073,017	1.28	21	1,144,858	1.32	21	1,172,946
Louisiana	1,277,324	1.52	17	1,314,327	1.51	18	1,347,758
Maine	423,617	.51	35	446,344	.51	35	465,582
Maryland	1,892,262	2.26	14	1,971,780	2.27	14	1,971,741
Mass.	2,604,392	3.11	10	2,655,615	3.06	10	2,626,137
Michigan	5,060,694	6.04	6	5,235,140	6.03	6	5,211,153
Minnesota	1,730,142	2.07	15	1,750,129	2.01	15	1,761,333
Miss.	310,886	.37	41	335,682	.39	41	360,877
Missouri	2,193,944	2.62	11	2,203,000	2.54	12	2,228,570
Montana	412,293	.49	36	412,472	.47	37	416,973
Nebraska	720,265	.86	24	741,973	.85	24	763,537
Nevada	190,850	.23	47	206,719	.24	47	223,572
N. H.	338,502	.40	40	358,671	.41	40	365,366
N. J.	3,691,776	4.41	8	3,860,231	4.44	8	3,793,828
N. M.	346,095	.41	38	372,744	.43	38	376,314
N. Y.	10,208,451	12.19	1	10,486,451	12.07	1	10,230,212
No. Car.	663,568	.79	26	712,461	.82	26	786,328
No. Dak.	264,036	.32	43	279,146	.32	42	285,092
Ohio	5,197,029	6.20	5	5,459,897	6.28	5	5,478,139
Oklahoma	613,115	.73	27	665,587	.77	27	630,858
Oregon	771,519	.92	22	784,167	.90	23	799,008
Penn.	7,121,529	8.50	2	7,341,435	8.45	3	6,962,451
R. I.	552,965	.66	32	561,785	.65	32	557,529
So. Car.	390,318	.47	37	417,660	.48	36	420,930
So. Dak.	233,623	.28	44	244,193	.28	44	249,547
Tenn.	752,763	.90	23	827,596	.95	22	873,704
Texas	4,166,218	4.97	7	4,357,861	5.02	7	4,500,606
Utah	225,833	.27	45	225,531	.26	46	238,825
Vermont	183,554	.22	48	191,484	.22	48	191,648
Virginia	1,276,507	1.52	18	1,407,907	1.62	16	1,347,165
Wash.	1,361,388	1.63	16	1,325,778	1.53	17	1,319,143
W. Va.	571,501	.68	31	580,167	.67	31	570,010
Wisconsin	3,112,955	3.72	9	3,198,468	3.68	9	3,267,348
Wyoming	134,115	.16	49	139,061	.16	49	144,227
TOTAL	83,765,828	(100.02)		86,875,846	(99.99)		87,184,444

Joint Exhibit No. JX-21

CONSUMPTION BY STATES

1961

State	Barrels	%	Rank
Alabama	568,258	.64	31
Arizona	714,178	.81	28
Arkansas	385,423	.44	38
California	7,687,303	8.69	2
Colorado	794,652	.90	25
Connecticut	1,283,869	1.45	20
Delaware	233,009	.26	47
Dist. of Col.	525,437	.59	34
Florida	2,206,745	2.49	12
Georgia	728,515	.82	27
Idaho	279,933	.32	43
Illinois	6,100,403	6.89	4
Indiana	2,253,314	2.55	11
Iowa	1,296,425	1.46	19
Kansas	634,300	.72	29
Kentucky	1,122,560	1.27	21
Louisiana	1,352,374	1.53	18
Maine	459,681	.52	35
Maryland	1,934,211	2.19	14
Massachusetts	2,679,692	3.03	10
Michigan	5,240,223	5.92	6
Minnesota	1,787,443	2.02	15
Mississippi	371,501	.42	41
Missouri	2,176,610	2.46	13
Montana	423,495	.48	37
Nebraska	772,298	.87	26
Nevada	237,352	.27	46
New Hampshire	372,328	.42	40
New Jersey	3,846,607	4.35	8
New Mexico	377,431	.43	39
New York	10,347,486	11.69	1
North Carolina	842,733	.95	23
North Dakota	302,677	.34	42
Ohio	5,510,203	6.23	5
Oklahoma	625,860	.71	30
Oregon	820,792	.93	24
Pennsylvania	7,079,954	8.00	3
Rhode Island	560,608	.63	33
South Carolina	441,527	.50	36
South Dakota	258,849	.29	44
Tennessee	897,278	1.01	22
Texas	4,670,771	5.28	7
Utah	238,690	.27	45
Vermont	189,467	.21	48
Virginia	1,448,768	1.64	16
Washington	1,388,133	1.57	17
W. Virginia	561,881	.63	32
Wisconsin	3,303,154	3.73	9
Wyoming	151,394	.17	49
TOTAL	88,485,795	99.99	

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-22

PRODUCTION BY STATES

State	1935 Barrels	%	RANK	1936 Barrels	%	RANK	1937 Barrels	
Arizona	27,736	.06	35	31,250	.06	37	21,853	
Calif.	2,108,520	4.42	10	2,704,645	4.83	9	2,659,428	4
Colorado	231,571	.49	21	298,608	.53	21	280,157	
Conn.	595,135	1.25	16	567,887	1.01	18	534,982	
Delaware	3,080	.01	39	2,623	.00	40	20,925	
D. C.	116,124	.24	27	94,093	.17	31	92,705	
Florida	216,951	.45	22	241,088	.43	22	297,058	
Georgia	19,279	.04	36	119,317	.21	29	107,290	
Idaho	35,973	.08	34	38,613	.07	36	29,427	
Illinois	3,289,031	6.89	4	3,944,272	7.04	4	3,987,167	6
Indiana	1,733,246	3.63	11	2,130,838	3.81	11	2,067,278	3
Iowa	145,972	.31	24	202,358	.36	23	186,451	
Kentucky	727,252	1.52	15	941,619	1.68	14	913,413	1
Louisiana	534,233	1.12	17	749,425	1.34	17	862,820	1
Maryland	1,301,247	2.73	12	1,295,409	2.31	12	1,351,166	2
Mass.	1,224,263	2.56	13	1,258,000	2.25	13	1,356,484	2
Michigan	3,070,331	6.43	6	3,296,354	5.89	6	3,171,497	5
Minnesota	2,110,561	4.42	9	2,620,186	4.68	10	2,695,865	4
Missouri	2,465,290	5.16	8	3,105,630	5.55	7	3,557,115	6
Montana	173,326	.36	23	199,505	.36	24	184,223	
Nebraska	246,265	.52	20	431,913	.77	20	447,726	
Nevada	19,000	.04	37	23,430	.04	38	20,680	
N. H.	72,742	.15	30	59,175	.11	34	50,799	
N. J.	2,506,554	5.25	7	3,104,142	5.54	8	3,377,237	5
N. M.	--	-	-	1,591	.00	41	5,740	
N. Y.	8,314,205	17.42	1	8,996,215	16.07	1	9,272,094	15
No. Car.	--	-	-	52,830	.09	35	90,083	
Ohio	3,123,092	6.54	5	3,908,218	6.98	5	4,285,447	7
Oklahoma	61,066	.13	31	131,991	.24	26	137,302	
Oregon	121,145	.25	26	122,860	.22	28	124,847	
Penn.	5,693,716	11.93	2	6,438,666	11.50	2	6,568,196	11
R. I.	483,516	1.01	18	544,402	.97	19	696,989	1
So. Dak.	6,130	.01	38	6,197	.01	39	5,196	
Tenn.	140,990	.30	25	156,931	.28	25	133,043	
Texas	478,473	1.00	19	771,776	1.38	16	825,947	1
Utah	87,742	.18	28	107,119	.19	30	115,917	
Virginia	57,630	.12	32	125,459	.22	27	148,550	
Wash.	860,828	1.80	14	919,765	1.64	15	902,825	1
W. Va.	75,211	.16	29	76,230	.14	32	56,688	
Wisconsin	5,207,777	10.91	3	6,112,458	10.92	3	6,338,141	10
Wyoming	50,698	.11	33	62,682	.11	33	57,008	
TOTAL	47,735,901	(100.00)		55,995,770	(100.00)		58,037,759	(1

PRODUCTION BY STATES

	1938		RANK	1939		RANK	1940		RANK
	Barrels	%		Barrels	%		Barrels	%	
ona	24,316	.05	38	29,820	.05	38	22,995	.04	38
f.	2,452,990	4.59	10	2,511,602	4.56	10	2,546,611	4.75	9
rado	240,924	.45	22	250,290	.45	21	253,363	.47	21
.	427,071	.80	19	438,360	.80	19	393,512	.73	19
ware	42,739	.08	34	49,241	.09	34	47,850	.09	34
.	76,805	.14	30	77,155	.14	31	113,625	.21	29
ida	246,582	.46	21	229,783	.42	22	231,269	.43	22
gia	63,270	.12	32	73,118	.13	32	59,220	.11	32
o	37,084	.07	36	33,411	.06	37	35,986	.07	36
nois	3,828,474	7.17	5	3,793,050	6.89	5	3,751,002	7.00	5
ana	1,699,830	3.18	11	1,719,453	3.12	11	1,674,276	3.12	11
a	169,509	.32	24	147,199	.27	24	145,572	.27	26
ucky	749,141	1.40	16	795,877	1.45	16	817,452	1.53	15
iana	810,137	1.52	15	870,481	1.58	14	940,234	1.75	14
land	1,274,192	2.39	12	1,330,255	2.42	12	1,248,517	2.33	12
.	1,244,516	2.33	13	1,288,499	2.34	13	1,237,205	2.31	13
igan	2,712,202	5.08	8	2,749,262	4.99	8	2,727,882	5.09	8
esota	2,695,331	5.05	9	2,685,607	4.88	9	2,370,475	4.42	10
ouri	3,878,414	7.26	4	4,310,976	7.83	4	4,360,530	8.14	4
ana	189,779	.36	23	188,103	.34	23	194,002	.36	23
naka	351,397	.66	20	313,903	.57	20	332,187	.62	20
a	15,252	.03	39	15,702	.03	39	17,701	.03	39
.	29,389	.06	37	34,453	.06	36	38,990	.07	35
.	3,315,088	6.21	7	3,454,269	6.28	7	3,443,463	6.43	7
.	3,244	.01	41	--	-	-	---	-	-
.	8,597,039	16.09	1	8,840,632	16.06	1	8,396,110	15.67	1
Dar.	75,830	.14	31	99,039	.18	28	91,684	.17	30
.	3,617,633	6.77	6	3,809,305	6.92	6	3,608,943	6.73	6
oma	125,159	.23	25	97,984	.18	29	61,662	.12	31
n	79,266	.15	29	95,593	.17	30	134,932	.25	25
.	5,975,183	11.19	2	6,247,286	11.35	2	6,043,213	11.28	2
.	643,008	1.20	18	648,073	1.18	18	627,372	1.17	18
Dak.	4,015	.01	40	3,206	.01	40	2,281	.00	40
.	104,027	.19	27	118,873	.22	26	152,699	.28	24
a	839,269	1.57	14	820,584	1.49	15	841,257	1.57	16
.	106,631	.20	26	121,615	.22	25	129,394	.24	27
ala	103,032	.19	28	117,755	.21	27	125,872	.23	28
.	702,999	1.32	17	720,223	1.31	17	799,335	1.49	17
a.	39,821	.07	35	35,717	.06	35	26,670	.05	37
nsin	5,764,000	10.79	3	5,813,166	10.56	3	5,493,999	10.25	3
ing	62,662	.12	33	62,586	.11	33	53,575	.10	33
	53,417,250	(100.02)		55,041,506	(99.98)		53,592,917	(99.97)	

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IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-24

PRODUCTION BY STATES

State	1941 Barrels	%	RANK	1942 Barrels	%	RANK	1943 Barrels	%
Arizona	18,637	.03	38	24,328	.04	38	38,797	.05
Calif.	2,601,505	4.34	9	3,221,333	4.76	9	4,166,415	5.56
Colorado	306,658	.51	21	410,596	.61	20	456,018	.61
Conn.	347,343	.58	20	295,823	.44	22	363,386	.49
Delaware	55,375	.09	32	64,116	.09	34	71,860	.10
D. C.	161,250	.27	26	166,875	.25	27	192,021	.26
Florida	258,948	.43	22	408,143	.60	21	490,147	.65
Georgia	75,896	.13	31	124,523	.18	30	161,296	.22
Idaho	36,391	.06	35	55,335	.08	35	57,475	.08
Illinois	3,930,263	6.56	7	4,151,008	6.14	7	4,840,881	6.46
Indiana	1,996,724	3.33	11	2,350,268	3.48	10	2,486,312	3.32
Iowa	122,705	.20	29	149,471	.22	29	175,602	.23
Kentucky	1,052,540	1.76	15	1,131,411	1.67	17	1,234,185	1.65
Louisiana	1,082,245	1.81	14	1,205,284	1.78	16	1,228,255	1.64
Maryland	1,382,128	2.31	12	1,510,925	2.23	12	1,596,311	2.13
Mass.	1,356,690	2.26	13	1,506,437	2.23	13	1,642,419	2.19
Michigan	3,099,642	5.17	8	3,375,295	4.99	8	3,629,615	4.84
Minnesota	2,177,772	3.63	10	2,106,329	3.11	11	2,333,184	3.11
Missouri	5,266,390	8.79	4	5,944,133	8.79	4	6,047,036	8.07
Montana	186,165	.31	24	182,010	.27	25	219,591	.29
Nebraska	491,099	.82	19	661,639	.98	19	697,569	.93
Nevada	15,065	.03	39	17,256	.03	39	19,944	.03
N. H.	35,244	.06	36	39,466	.06	37	54,322	.07
N. J.	4,078,937	6.81	6	4,515,315	6.68	6	4,866,767	6.50
N. Y.	9,061,840	15.12	1	9,749,617	14.42	1	10,796,770	14.41
No. Car.	110,668	.18	30	124,206	.18	31	143,644	.19
Ohio	4,166,751	6.95	5	4,810,490	7.11	5	5,384,026	7.19
Oklahoma	49.742	.08	34	120,816	.18	32	189,022	.25
Oregon	164,245	.27	25	214,861	.32	24	243,987	.33
Penn.	6,790,774	11.33	2	7,368,306	10.89	3	8,098,355	10.81
R. I.	690,680	1.15	18	731,741	1.08	18	843,906	1.13
So. Dak.	2,867	.00	40	1,199	.00	40	--	-
Tenn.	195,153	.33	23	238,600	.35	23	249,640	.33
Texas	918,066	1.53	17	1,236,967	1.83	14	1,340,991	1.79
Utah	123,063	.21	28	157,796	.23	28	172,442	.23
Virginia	139,269	.23	27	181,185	.27	26	306,138	.41
Wash.	940,970	1.57	16	1,232,473	1.82	15	1,366,031	1.82
W. Va.	26,700	.04	37	41,092	.06	36	52,775	.07
Wisconsin	6,345,674	10.59	3	7,741,710	11.45	2	8,584,969	11.46
Wyoming	52,833	.09	33	64,586	.10	33	79,630	.11
TOTAL	59,914,907	(99.96)		67,632,964	(100.00)		74,921,734	(100.

PRODUCTION BY STATES

	1944		RANK	1945		RANK	1946		RANK
	Barrels	%		Barrels	%		Barrels	%	
a	63,714	.07	36	73,176	.08	36	88,113	.11	35
	4,855,809	5.69	8	5,000,785	5.72	8	4,450,487	5.39	8
do	524,160	.61	21	557,238	.64	20	507,167	.61	21
	500,630	.59	22	455,663	.52	22	470,723	.57	22
re	106,996	.13	33	118,709	.14	33	122,737	.15	33
	201,060	.24	29	205,198	.23	29	191,273	.23	28
	534,317	.63	20	542,218	.62	21	512,346	.62	20
	179,972	.21	30	185,579	.21	30	153,315	.19	32
	61,993	.07	37	81,621	.09	35	86,837	.11	36
ls	5,682,750	6.66	6	5,983,035	6.84	6	6,161,112	7.46	4
	2,613,042	3.06	11	2,735,895	3.13	11	2,454,996	2.97	11
	209,276	.25	28	216,143	.25	27	229,154	.28	26
y	1,283,957	1.50	16	1,326,968	1.52	16	1,214,966	1.47	16
na	1,258,112	1.47	17	1,316,888	1.51	17	1,162,635	1.41	17
d	1,733,784	2.03	13	1,780,147	2.04	13	1,665,840	2.02	13
	2,228,425	2.61	12	2,141,939	2.45	12	2,198,357	2.66	12
n	4,160,036	4.87	9	4,187,158	4.79	9	4,087,904	4.95	9
ta	2,846,172	3.33	10	2,815,499	3.22	10	2,790,774	3.38	10
i	6,342,885	7.43	4	6,240,182	7.14	4	5,440,520	6.59	6
	252,021	.30	26	264,040	.30	25	254,467	.31	25
a	721,088	.84	19	753,176	.86	19	708,516	.86	19
	26,824	.03	39	28,379	.03	39	34,737	.04	39
	68,935	.08	35	54,991	.06	38	55,991	.07	38
	5,469,515	6.41	7	5,486,623	6.27	7	5,310,734	6.43	7
	13,212,698	15.48	1	13,724,585	15.69	1	13,610,836	16.48	1
,	147,074	.17	32	153,328	.18	32	160,044	.19	31
	5,983,179	7.01	5	6,231,800	7.13	5	5,534,424	6.70	5
a	214,398	.25	27	215,004	.25	28	189,192	.23	29
	281,256	.33	24	305,313	.35	23	272,258	.33	24
	9,340,892	10.94	3	9,869,116	11.28	2	8,904,543	10.78	3
	968,276	1.13	18	1,035,989	1.18	18	1,074,153	1.30	18
	255,160	.30	25	255,817	.29	26	226,649	.27	27
	1,452,327	1.70	15	1,463,593	1.67	15	1,338,704	1.62	15
	175,085	.21	31	179,184	.20	31	178,744	.22	30
	313,116	.37	23	279,133	.32	24	291,375	.35	23
	1,505,543	1.76	14	1,580,347	1.81	14	1,385,257	1.68	14
	58,847	.07	38	61,788	.07	37	57,040	.07	37
n	9,420,922	11.04	2	9,445,668	10.80	3	8,905,076	10.78	2
	95,622	.11	34	105,109	.12	34	101,957	.12	34
	85,349,868 (99.98)			87,457,024 (100.00)			82,583,953 (100.00)		

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-26

PRODUCTION BY STATES

State	1947 Barrels	%	RANK	1948 Barrels	%	RANK	1949 Barrels	%
Arizona	121,132	.13	31	155,184	.18	27	151,234	.17
Calif.	4,745,385	5.19	8	4,355,214	4.96	9	4,337,443	4.91
Colorado	655,285	.72	20	649,390	.74	20	768,301	.87
Conn.	275,103	.30	24	156,939	.18	26	176,490	.20
Delaware	162,051	.18	30	125,724	.14	29	132,299	.15
D. C.	181,580	.20	27	96,292	.11	31	101,698	.12
Florida	477,491	.52	21	394,371	.45	22	354,658	.40
Georgia	77,906	.09	36	57,195	.07	37	70,121	.08
Idaho	70,960	.08	37	60,840	.07	36	73,287	.08
Illinois	5,620,191	6.14	7	5,561,982	6.34	6	4,873,616	5.51
Indiana	3,349,361	3.66	10	2,911,180	3.32	11	2,776,186	3.14
Iowa	166,520	.18	29	114,095	.13	30	113,112	.13
Kentucky	1,563,885	1.71	16	1,828,681	2.08	14	2,087,717	2.36
Louisiana	1,485,991	1.62	17	1,832,998	2.09	13	1,944,059	2.20
Maryland	1,923,291	2.10	12	1,938,482	2.21	12	2,005,486	2.27
Mass.	1,865,565	2.04	13	1,686,667	1.92	16	1,656,866	1.87
Michigan	4,662,653	5.10	9	4,548,256	5.18	8	4,687,247	5.30
Minnesota	3,250,911	3.55	11	3,081,386	3.51	10	2,993,918	3.38
Missouri	6,975,545	7.62	4	7,098,227	8.09	4	8,129,852	9.20
Montana	252,590	.28	25	206,199	.24	24	201,593	.23
Nebraska	1,043,340	1.14	18	979,614	1.12	18	965,127	1.09
Nevada	29,983	.03	38	30,103	.03	38	29,376	.03
N. H.	16,251	.02	39	22,083	.03	39	29,495	.03
N. J.	6,459,547	7.06	5	6,560,900	7.48	5	7,278,381	8.23
N. Y.	13,329,205	14.57	1	12,268,692	13.99	1	10,714,143	12.12
No. Car.	107,814	.12	33	62,511	.07	35	55,315	.06
Ohio	6,316,696	6.90	6	5,458,752	6.22	7	4,807,435	5.44
Oklahoma	115,214	.13	32	65,219	.07	34	53,107	.06
Oregon	377,758	.41	22	396,201	.45	21	371,482	.42
Penn.	9,412,659	10.29	3	9,078,842	10.35	3	9,439,086	10.68
R. I.	883,796	.97	19	770,152	.88	19	806,905	.91
Tenn.	278,801	.30	23	250,692	.29	23	212,108	.24
Texas	1,796,407	1.96	14	1,717,685	1.96	15	1,484,464	1.68
Utah	180,563	.20	28	177,766	.20	25	162,962	.18
Virginia	211,477	.23	26	140,746	.16	28	178,802	.20
Wash.	1,653,447	1.81	15	1,591,521	1.81	17	1,741,190	1.97
W. Va.	81,915	.09	35	73,410	.08	33	66,038	.07
Wisc.	11,204,452	12.25	2	11,144,944	12.70	2	12,281,394	13.90
Wyoming	106,924	.12	34	73,776	.08	32	61,363	.07
TOTAL	91,489,645	(100.01)		87,722,911	(99.98)		88,373,356	(99.9

PRODUCTION BY STATES

	1950		RANK	1951		RANK	1952		RANK
	Barrels	%		Barrels	%		Barrels	%	
a	168,185	.19	26	181,890	.20	24	187,195	.21	24
do	4,691,508	5.33	6	4,854,624	5.42	6	5,048,267	5.59	6
	882,860	1.00	19	817,107	.91	19	901,842	1.00	19
re	132,319	.15	28	128,200	.14	28	128,167	.14	27
	88,425	.10	31	64,093	.07	32	28,736	.03	37
	119,862	.14	29	125,330	.14	29	104,144	.12	29
	353,073	.40	22	340,942	.38	22	340,914	.34	22
	62,681	.07	34	60,192	.07	33	55,914	.06	32
	61,664	.07	35	54,260	.06	35	51,226	.06	33
s	4,342,538	4.93	9	4,084,029	4.56	9	3,867,921	4.28	9
	2,637,728	2.99	11	2,482,957	2.77	11	2,273,915	2.52	11
	99,943	.11	30	81,338	.09	30	60,809	.07	31
y	2,041,046	2.32	12	2,024,464	2.26	13	2,094,643	2.32	14
na	1,945,529	2.21	14	1,839,740	2.06	16	2,181,951	2.42	13
d	2,031,681	2.31	13	2,160,904	2.41	12	2,222,054	2.46	12
	1,504,505	1.71	17	1,340,665	1.50	17	1,246,146	1.38	17
a	4,409,150	5.01	8	4,558,719	5.09	8	4,775,170	5.29	8
ta	2,743,964	3.12	10	2,758,702	3.08	10	2,883,567	3.19	10
i	8,379,835	9.51	4	8,432,785	9.42	4	8,299,457	9.19	3
	196,874	.22	23	210,249	.23	23	227,686	.25	23
a	1,042,656	1.18	18	983,133	1.10	18	914,027	1.01	18
	22,774	.03	38	20,296	.02	38	13,570	.02	38
	1,557	.00	39	---	-	-	---	-	-
	6,431,248	7.30	5	7,007,387	7.83	5	7,428,817	8.22	4
	11,790,346	13.39	2	12,167,042	13.59	2	12,229,078	13.54	2
.	52,146	.06	37	54,631	.06	34	50,432	.06	34
	4,607,398	5.23	7	4,643,666	5.19	7	4,842,549	5.36	7
a	52,187	.06	36	51,325	.06	36	48,458	.05	35
	372,561	.42	21	359,605	.40	21	342,923	.38	21
	8,577,471	9.74	3	8,300,968	9.27	3	7,225,783	8.00	5
	786,332	.89	20	743,597	.83	20	718,562	.80	20
	174,768	.20	25	144,902	.16	27	112,268	.12	28
	1,830,551	2.08	16	1,934,301	2.16	15	1,912,033	2.12	16
	156,961	.18	27	175,792	.20	25	177,908	.20	25
	191,212	.22	24	172,370	.19	26	154,785	.17	26
	1,867,220	2.12	15	1,960,262	2.19	14	2,050,113	2.27	15
	66,207	.08	33	67,194	.08	31	69,038	.08	30
	13,085,174	14.86	1	14,076,966	15.73	1	15,075,934	16.69	1
	69,563	.08	32	47,583	.05	37	37,395	.04	36
	88,071,702 (100.01)			89,512,210 (99.97)			90,383,397 (100.05)		

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-28

PRODUCTION BY STATES

State	1953 Barrels	%	RANK	1954 Barrels	%	RANK	1955 Barrels	%
Arizona	205,818	.22	24	221,115	.25	23	211,665	.23
Calif.	5,547,412	6.03	6	6,588,482	7.42	6	6,764,038	7.50
Colorado	971,299	1.06	19	1,129,262	1.27	17	1,238,605	1.37
Conn.	119,707	.13	27	131,360	.15	27	130,193	.14
Delaware	18,032	.02	37	7,045	.01	36	--	-
D. C.	93,118	.10	28	53,816	.06	30	38,356	.04
Florida	372,574	.40	21	421,675	.47	21	452,980	.50
Georgia	52,317	.06	32	39,936	.04	34	--	-
Idaho	43,599	.05	34	32,563	.04	35	28,830	.03
Illinois	4,468,984	4.86	9	3,762,548	4.23	9	3,632,359	4.03
Indiana	2,514,508	2.73	11	2,297,546	2.59	12	2,476,873	2.75
Iowa	65,465	.07	30	61,740	.07	28	84,036	.09
Kentucky	2,236,798	2.43	14	2,231,970	2.51	15	2,201,555	2.44
Louisiana	2,462,324	2.68	12	2,534,418	2.85	11	2,566,052	2.85
Maryland	2,260,397	2.46	13	2,260,632	2.54	13	2,307,114	2.56
Mass.	1,068,703	1.16	18	961,279	1.08	19	933,713	1.04
Michigan	5,180,144	5.63	7	4,952,810	5.57	8	5,169,492	5.73
Minnesota	3,342,209	3.63	10	3,436,474	3.87	10	3,753,714	4.16
Missouri	9,001,934	9.78	3	7,643,644	8.60	4	7,068,288	7.84
Montana	241,079	.26	23	256,119	.29	22	261,644	.29
Nebraska	1,084,230	1.18	17	1,107,824	1.25	18	1,119,786	1.24
Nevada	8,196	.01	38	4,706	.01	37	4,670	.01
N. J.	7,566,161	8.22	5	7,114,554	8.01	5	7,542,498	8.36
N. Y.	13,024,908	14.15	1	11,877,497	13.37	1	12,061,472	13.37
No. Car.	49,768	.05	33	47,834	.05	32	69,414	.08
Ohio	4,819,305	5.24	8	5,034,653	5.67	7	5,118,149	5.68
Oklahoma	42,643	.05	35	42,896	.05	33	42,249	.05
Oregon	262,514	.29	22	208,868	.24	24	196,986	.22
Penn.	7,762,528	8.43	4	7,673,791	8.64	3	7,641,361	8.47
R. I.	845,939	.92	20	893,527	1.01	20	953,858	1.06
Tenn.	84,655	.09	29	51,498	.06	31	--	-
Texas	2,049,506	2.23	16	2,120,248	2.39	16	2,068,287	2.29
Utah	155,269	.17	26	161,796	.18	25	156,772	.17
Virginia	166,722	.18	25	135,697	.15	26	148,850	.16
Wash.	2,183,930	2.37	15	2,218,840	2.50	14	2,216,534	2.46
W. Va.	63,624	.07	31	59,192	.07	29	55,167	.06
Wisc.	11,567,224	12.57	2	11,074,157	12.46	2	11,498,019	12.74
Wyoming	26,164	.03	36	458	.00	38	--	-
TOTAL	92,029,707	(100.01)		88,852,470	(100.02)		90,213,599	(100

PRODUCTION BY STATES

	1956		RANK	1957		RANK	1958		RANK
	Barrels	%		Barrels	%		Barrels	%	
	219,980	.24	23	190,056	.21	23	202,961	.23	23
	6,988,442	7.74	5	6,991,520	7.82	5	7,236,448	8.04	5
	1,294,515	1.43	17	1,450,869	1.62	17	1,656,792	1.84	17
	111,464	.12	27	107,959	.12	27	109,612	.12	28
	460,418	.51	21	497,699	.56	21	486,101	.54	21
	--	-	-	--	-	-	178,393	.20	25
	30,525	.03	32	30,828	.03	31	28,501	.03	32
	3,298,400	3.65	10	3,230,390	3.61	10	3,148,868	3.50	10
	2,354,391	2.61	13	2,323,133	2.60	14	2,491,187	2.77	13
	51,312	.06	28	50,944	.06	29	60,088	.07	29
	2,171,220	2.41	16	2,097,229	2.35	16	2,003,526	2.23	16
	2,523,006	2.80	11	2,535,537	2.84	11	2,375,004	2.64	14
	2,223,349	2.46	15	2,185,121	2.44	15	2,196,735	2.44	15
	1,118,151	1.24	18	1,176,605	1.32	18	1,230,789	1.37	18
	5,233,099	5.80	7	4,968,401	5.56	7	4,049,728	4.50	8
	3,838,159	4.25	9	3,764,277	4.21	9	3,991,628	4.43	9
	6,804,399	7.54	6	6,622,896	7.41	6	7,680,198	8.53	4
	257,281	.29	22	262,981	.29	22	269,440	.30	22
	1,109,711	1.23	19	1,030,540	1.15	19	1,070,634	1.19	19
	4,237	.00	33	--	-	-	--	-	-
	7,638,875	8.46	3	7,611,851	8.52	3	7,745,079	8.60	3
	11,752,309	13.02	2	11,944,023	13.36	1	11,419,954	12.68	2
	49,866	.06	30	--	-	-	--	-	-
	4,997,119	5.54	8	4,674,207	5.23	8	4,581,362	5.09	7
	39,864	.04	31	37,094	.04	30	33,494	.04	31
	204,755	.23	24	188,775	.21	24	198,120	.22	24
	7,501,160	8.31	4	7,330,731	8.20	4	7,092,760	7.88	6
	978,043	1.08	20	945,497	1.06	20	954,063	1.06	20
	2,308,605	2.56	14	2,508,607	2.81	13	2,589,202	2.88	12
	168,918	.19	25	159,167	.18	26	148,837	.17	26
	147,073	.16	26	163,604	.18	25	137,414	.15	27
	2,395,602	2.65	12	2,515,748	2.81	12	2,759,684	3.06	11
	53,139	.06	29	51,272	.06	28	48,651	.05	30
	11,938,007	13.23	1	11,735,362	13.13	2	11,868,224	13.18	1
	90,265,394	(100.00)		89,382,923	(99.99)		90,043,417	(100.03)	

[fol. 202]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-30

PRODUCTION BY STATES

State	1959 Barrels	%	RANK	1960 Barrels	%	RANK
Arizona	168,462	.18	25	170,380	.18	25
Calif.	7,659,541	8.23	5	7,548,383	8.09	5
Colorado	1,935,417	2.08	17	2,288,269	2.45	14
Conn.	108,382	.12	28	98,155	.11	28
Florida	1,648,252	1.77	18	1,865,237	2.00	18
Georgia	272,240	.29	22	383,106	.41	22
Idaho	25,010	.03	32	1,672	.00	32
Illinois	3,783,586	4.07	10	3,891,499	4.17	10
Indiana	2,261,170	2.43	14	2,321,461	2.49	13
Iowa	49,562	.05	29	55,462	.06	29
Kentucky	1,984,389	2.13	16	1,865,048	2.00	17
Louisiana	2,294,765	2.47	13	2,287,695	2.45	15
Maryland	2,191,655	2.36	15	1,980,659	2.12	16
Mass.	1,411,790	1.52	19	1,492,097	1.60	19
Michigan	4,454,425	4.79	8	4,377,209	4.69	8
Minnesota	3,928,641	4.22	9	4,117,650	4.41	9
Missouri	8,231,596	8.85	4	8,218,025	8.80	3
Montana	254,553	.27	23	252,494	.27	23
Nebraska	1,063,929	1.14	20	1,094,444	1.17	20
N. J.	7,896,707	8.49	3	8,148,747	8.73	4
N. Y.	11,640,913	12.51	1	11,156,789	11.95	1
Ohio	4,701,974	5.05	7	4,623,970	4.95	7
Oklahoma	29,207	.03	31	51,910	.06	30
Oregon	192,138	.21	24	201,453	.22	24
Penn.	7,188,826	7.73	6	7,008,496	7.51	6
R. I.	964,892	1.04	21	955,566	1.02	21
Texas	2,766,390	2.97	12	2,944,535	3.15	12
Utah	138,169	.15	26	152,161	.16	26
Virginia	135,634	.15	27	137,640	.15	27
Wash.	2,891,146	3.11	11	3,024,299	3.24	11
W. Va.	47,369	.05	30	49,941	.05	31
Wisc.	10,737,424	11.54	2	10,589,589	11.34	2
TOTAL	93,058,154	(100.03)		93,354,041	(100.00)	

PRODUCTION BY STATES

1961

State	Barrels	%	Rank
Arizona	165,877	.26	24
California	7,442,801	7.83	5
Colorado	2,662,530	2.80	13
Connecticut	98,308	.10	28
Florida	1,924,574	2.02	17
Georgia	425,529	.45	22
Illinois	4,503,357	4.74	7
Indiana	2,423,218	2.55	14
Iowa	32,670	.03	31
Kentucky	1,713,103	1.80	18
Louisiana	2,368,538	2.49	15
Maryland	2,275,878	2.39	16
Massachusetts	1,491,625	1.57	19
Michigan	4,236,045	4.46	9
Minnesota	3,960,303	4.17	10
Missouri	7,902,775	8.31	4
Montana	238,033	.25	25
Nebraska	1,106,426	1.16	21
New Jersey	8,184,496	8.61	3
New York	11,294,060	11.88	1
North Dakota	16,540	.02	32
Ohio	4,373,618	4.60	8
Oklahoma	54,662	.06	29
Oregon	230,763	.24	26
Pennsylvania	6,887,962	7.25	6
Rhode Island	1,183,907	1.25	20
Texas	2,994,682	3.15	12
Utah	257,723	.27	23
Virginia	137,402	.14	27
Washington	3,138,919	3.30	11
W. Virginia	47,730	.05	30
Wisconsin	11,198,894	11.78	2
TOTAL	94,972,948	99.98	

[fol. 204] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-32

SALES OF BEER IN THE UNITED STATES

1927

Brewery	Barrels	1/ %	RANK	Brewery	Barrels	%
Anh.-Busch	6,115,000	7.25	1	Falls City	538,000	.64
Schlitz	6,023,000	7.15	2	Krueger	533,000	.63
Falstaff	4,300,000	5.10	3	Regal Pale	464,726	.55
Ballantine	3,981,000	4.72	4	West End	450,000	.53
Hamm	3,376,000	4.01	5	Ortlieb	422,000	.50
Carling	3,150,000	3.74	6	Heidelberg	402,000	.48
Liebmann	2,966,000	3.52	7	Heileman	380,338	.45
Schaefer	2,940,000	3.49	8	Oertel	365,000	.43
Stroh	2,583,000	3.06	9	Hand, Peter	345,000	.41
Pabst	2,548,452	3.02	10	Storz	338,240	.40
Miller	2,322,000	2.75	11	Goetz	331,000	.39
Lucky Lager	1,966,000	2.33	12	Canadian Ace	323,000	.38
Schmidt	1,757,000	2.08	13	Stegmaier	321,000	.38
Ruppert	1,540,000	1.83	14	Erie	316,939	.38
Piel	1,435,000	1.70	15	GriesedieckBros	288,000	.34
Drewrys	1,371,000	1.63	16	Hampden-Harvard	284,468	.34
National	1,301,000	1.54	17	Latrobe	280,000	.33
Blatz	1,239,334	1.47	18	Schoenling	250,000	.30
Coors	1,146,000	1.36	19	Esslinger	246,000	.29
Jackson	1.107,000	1.31	20	American-Miami	233,264	.28
Olympia	1,100,000	1.31	21	Kingsbury	226,497	.27
Duquesne	1,061,000	1.26	22	Bavarian	226,000	.27
San Francisco	974,000	1.16	23	Atlantic	222,000	.27
Pearl	943,000	1.12	24	Fitzgerald	222,000	.27
Pfieffer	911,411	1.08	25	Maier	220,015	.26
Narragansett	881,000	1.05	26	Pilsener	213,000	.25
International	843,554	1.00	27	Neuweiler's	209,396	.25
Goebel	811,914	.96	28	Standard-Rochester	202,000	.24
Genesee	805,000	.96	29	Terre Haute	202,000	.24
Wiedemann	802,069	.95	30	Lion, Inc.	198,500	.23
Gunther	800,000	.95	31	Fox Head	189,246	.22
Pittsburgh	764,327	.91	32	Arizona	188,000	.22
Lone Star	738,900	.88	33	Horlacher	183,741	.21
Burger	650,000	.77	34	Blitz-Weinhard	179,000	.21
Hudepohl	634,000	.75	35	Red Top	175,000	.21
Sicks' Rainier	577,000	.68	36	Wagner	172,000	.20
Minneapolis	565,000	.67	37	Queen City	172,000	.20
Sterling	565,000	.67	37			

1. Computed as percentage of taxpaid withdrawls: 84,288,580

(continued)

SALES OF BEER IN THE UNITED STATES
(continued

1957

Brewery	Barrels	%	RANK
t Pitt	169,633	.20	76
kropolis of			
w Jersey	162,000	.19	77
erican - Balt.	160,000	.19	78
ffenreffer	160,000	.19	78
ndard	155,000	.18	80
erican -			
w Orleans	150,000	.18	81
ley	148,000	.18	82
t Falls	136,328	.16	83
& B	136,000	.16	84
d Reading	135,000	.16	85
shine	132,330	.16	86
ger	131,000	.16	87
tz	129,085	.15	88
d.-Milwaukee	125,968	.15	89
stlivre	125,000	.15	90
haye	122,000	.14	91
son's	118,000	.14	92
lf	116,000	.14	93
st	114,000	.14	94
ids	108,000	.13	95
ak	107,000	.13	96
veland-			
dusky	103,382	.12	97
den	102,000	.12	98
ll	102,000	.12	98
erle-Congress	100,000	.12	100
de	100,000	.12	100
er-Waukesha	98,760	.12	102
elman	98,330	.12	103
gling	96,000	.11	104
ler	95,000	.11	105
rick	95,000	.11	105
mian -			
lifornia	92,000	.11	107
erland	91,000	.11	108

Brewery	Barrels	%	RANK
Fehr	91,000	.11	108
Globe	90,000	.11	110
Koch	88,000	.10	111
Simon	88,000	.10	111
Bosch	87,201	.10	113
Bohemian-Joliet	86,524	.10	114
Diamond Springs	84,000	.10	115
Fisher	84,000	.10	115
Walter (Pueblo)	83,200	.10	117
Century	80,000	.09	118
Eagle	80,000	.09	118
Missoula	77,400	.09	120
Jones	75,091	.09	121
Metz	75,000	.09	122
Pilsen	72,300	.09	123
Leinenkugel	72,046	.09	124
Tampa	72,000	.09	125
F & S	70,000	.08	126
Hensler	70,000	.08	126
Enterprise	63,000	.07	128
Tivoli	62,500	.07	129
Lebanon	61,351	.07	130
Becker	60,000	.07	131
Eastern	60,000	.07	131
Home	60,000	.07	131
Mt. Carbon	60,000	.07	131
Spearman	60,000	.07	131
Oshkosh	54,226	.06	136
Warsaw	54,000	.06	137
Oconto	53,839	.06	138
Ambrosia	53,000	.06	139
Columbia	53,000	.06	139
Monarch	50,624	.06	141
Fitger	50,000	.06	142
Pesenmeier	49,313	.06	143
Bartels	45,000	.05	144
Worcester	45,000	.05	144

(continued)

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-34

SALES OF BEER IN THE UNITED STATES
(continued)

1957

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Stein	42,000	.05	146	Bub, Peter	18,000	.02
Utica	40,000	.05	147	Cold Spring	18,000	.02
Stevens Point	39,236	.05	148	Sioux City	18,000	.02
Potosi	39,000	.05	149	Rice Lake	17,509	.02
Rahr-Green Bay	38,593	.05	150	Northern	17,000	.02
Phoenix	38,000	.05	151	Mankato	16,000	.02
Sebewaing	37,000	.04	152	Fleckenstein	14,000	.02
Walter, George	36,031	.04	153	Eulberg	13,000	.02
Fauerbach	36,000	.04	154	Two Rivers	13,000	.02
Progress	36,000	.04	154	Effinger	11,515	.01
Hornell	35,000	.04	156	Storch	11,000	.01
Renner	35,000	.04	156	Geyer	10,000	.01
West Bend	35,000	.04	156	Kiewel	10,000	.01
Huber	34,703	.04	159	Star Peerless	10,000	.01
Peoples	33,529	.04	160	Straub	10,000	.01
Hauenstein	32,936	.04	161	Marathon	9,618	.01
Walter(EauClaire)	31,019	.04	162	Marshfield	9,000	.01
Star Union	31,000	.04	163	Mountain	9,000	.01
Dubuque	30,703	.04	164	Zeman	9,000	.01
Butte	26,459	.03	165	Berlin	8,170	.01
Hanley	26,000	.03	166	Fountain	7,000	.00
Duluth	24,000	.03	167	Kessler	7,000	.00
Men.-Marinette	23,555	.03	168	Mineral Springs	7,000	.00
Wausau	23,000	.03	169	Fischback	6,000	.00
Rhinelander	22,768	.03	170	Jung	6,000	.00
Sieben	21,000	.02	171	Altoona	5,000	.00
Spoetzl	20,236	.02	172	Knapstein	5,000	.00
Schell	20,000	.02	173	Anaconda	3,000	.00
Silver Springs	20,000	.02	173	Anchor	3,000	.00
Reisch	19,000	.02	175	Weber, G.	3,000	.00
				Reno	1,000	.00

SALES OF BEER IN THE UNITED STATES

1958

wery	Barrels	1/ %	RANK	Brewery	Barrels	%	RANK
nBusch	6,982,022	8.28	1	Atlantic	575,000	.68	39
litz	5,875,000	6.96	2	Krueger	567,000	.67	40
staff	4,550,000	5.39	3	Falls City	530,000	.63	41
lantine	4,035,529	4.78	4	Regal Pale	433,958	.51	42
ling	3,531,182	4.19	5	West End	432,000	.51	43
n-	3,394,206	4.02	6	Ortlieb	415,000	.49	44
sefer	2,970,000	3.52	7	Goetz	410,000	.49	45
mann	2,850,000	3.38	8	Heileman	370,828	.44	46
y Lager	2,361,540	2.80	9	Storz	350,642	.42	47
ler	2,312,701	2.74	10	Oertel	350,000	.41	48
st	2,254,001	2.67	11	Canadian Ace	341,856	.41	49
ch	1,922,872	2.28	12	Maier	329,081	.39	50
ts	1,717,485	2.04	13	Stegmaier	321,000	.38	51
idt	1,660,909	1.97	14	Hand, Peter	320,000	.38	52
ey's	1,527,304	1.81	15	Erie	316,939	.38	53
ert	1,450,000	1.72	16	Latrobe	281,000	.33	54
l	1,420,000	1.68	17	Hampden-Harvard	270,000	.32	55
rs	1,406,000	1.67	18	Schoenling	262,000	.31	56
onal	1,294,000	1.53	19	Pilsener	250,000	.30	57
apis	1,249,200	1.48	20	Kingsbury	248,491	.30	58
esne	1,035,000	1.23	21	Standard-			
son	1,030,351	1.22	22	Rochester	246,000	.29	59
el	981,339	1.16	23	Fitzgerald	240,000	.28	60
rmeister	965,500	1.14	24	Esslinger	235,000	.28	61
ragansett	888,000	1.05	25	Bavarian	229,000	.27	62
ffer	844,623	1.00	26	Neuweiler's	205,251	.24	63
rnational	827,000	.98	27	Centlivre	205,000	.24	64
ther	800,000	.95	28	Lion, Inc.	202,750	.24	65
Star	793,530	.94	29	Horlacher	201,614	.24	66
mann	791,000	.94	30	Arizona	196,000	.23	67
sburgh	784,473	.93	31	Blitz-Weinhard	187,000	.22	68
ese	780,000	.92	32	American-			
pohl	647,000	.77	33	New Orleans	185,000	.22	69
ding	627,000	.74	34	American-Balt.	185,000	.22	69
apolis	600,838	.71	35	Leisy	175,000	.21	71
er	590,000	.70	36	Standard-			
el	589,158	.70	37	Cleveland	171,000	.20	72
's Rainier	580,000	.69	38	Haffenreffer	161,000	.19	73

1/ Computed as percentage of taxpaid withdrawls:
84,356,660 barrels.

(continued)

[fol. 208]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-36

SALES OF BEER IN THE UNITED STATES
(continued)

1958

Brewery	Barrels	%	RANK	Brewery	Barrels
Metropolis of New Jersey	158,000	.19	74	Tampa	80,000
Buckeye	158,000	.19	74	Cumberland	77,000
Camden	156,000	.18	76	Weber-Waukesha	77,000
Ind.-Milwaukee	155,477	.18	77	Spearman	76,000
Fox Head	155,000	.18	78	Globe	75,000
Old Reading	155,000	.18	78	Leinenkugel	75,000
Wagner	144,000	.17	80	Renner	71,000
Great Falls	140,686	.17	81	F & S	70,562
Queen City	140,000	.17	82	Eastern	70,000
Sunshine	132,934	.16	83	Pilsen	70,000
Haberle-Congress	125,000	.15	84	Tivoli	70,000
Dawson's	123,000	.15	85	Enterprise	67,000
Kaier	120,000	.14	86	Eagle	64,000
Gettelman	119,329	.14	87	Oconto	59,047
National	115,000	.14	88	Oshkosh	57,095
Cleveland-Sandusky	111,000	.13	89	Century	57,000
E & B	110,920	.13	90	Columbia	55,000
Gluek	109,000	.13	91	Pitger	55,000
DuBois	108,000	.13	92	Mt. Carbon	55,000
Best	105,000	.12	93	Home	55,000
Hull	105,000	.12	93	Metz	51,000
Dixie	104,943	.12	95	Ambrosia	50,000
Gulf	103,000	.12	96	Reisch	50,000
Bosch	102,807	.12	97	Becker	49,000
Bohemian-Joliet	102,191	.12	98	Silver Springs	47,000
Yuengling	100,000	.12	99	Fesenmeier	46,000
Walter (Pueblo)	93,000	.11	100	Bartel	45,000
Dobler	93,000	.11	100	Utica	44,000
Gretz	92,305	.11	102	Worcester	44,000
Hedrick	91,000	.11	103	Rahr-Green Bay	42,014
Koch	88,000	.10	104	Sebewaing	41,000
Missoula	87,432	.10	105	Hornell	40,000
Simon	87,000	.10	106	Huber	38,839
Diamond Springs	84,000	.10	107	Fauerbach	38,000
Jones	82,000	.10	108	Potosi	38,000
				Walter(George)	37,738
				Stevens Point	37,584

(continue

SALES OF BEER IN THE UNITED STATES
(continued)

1958

wery	Barrels	%	RANK	Brewery	Barrels	%	RANK
uth	35,000	.04	146	Northern	18,000	.02	169
consin	35,000	.04	146	Kiewel	15,000	.02	170
non	35,000	.04	146	Mankato	15,000	.02	170
enstein	34,001	.04	149	Bub, Peter	13,000	.02	172
Bend	34,000	.04	150	Geyer	12,049	.01	173
les	33,421	.04	151	Two Rivers	12,000	.01	174
aw	33,000	.04	152	Fleckenstein	11,000	.01	175
ress	32,559	.04	153	Effinger	10,902	.01	176
er(EauClaire)	31,636	.04	154	Marathon	10,402	.01	177
que	31,003	.04	155	Straub	10,000	.01	178
en	30,000	.04	156	Fischback	8,000	.009	179
Union	30,000	.04	156	Fountain	8,000	.009	179
rch	28,000	.03	158	Knapstein	8,000	.009	179
ll	25,000	.03	159	Marshfield	8,000	.009	179
elander	24,387	.03	160	Berlin	7,471	.009	183
n City	24,000	.03	161	Storch	7,000	.008	184
e	23,526	.03	162	Eulberg	6,000	.007	185
tzl	22,063	.03	163	Mineral Springs	6,000	.007	185
tain	21,000	.02	164	Altoona	5,000	.006	187
Spring	20,000	.02	165	Kessler	4,000	.005	188
-Marinette	19,099	.02	166	Anchor	2,000	.002	189
au	19,000	.02	167	Weber, G.	2,000	.002	189
Lake	18,213	.02	168	Jung	1,000	.001	191

[fol. 210]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-38

SALES OF BEER IN THE UNITED STATES

1952

Brewery	Barrels	1/ %	RANK	Brewery	Barrels	%
Anh.-Busch	8,027,000	9.17	1	Sicks'Rainier	582,000	.66
Schlitz	5,860,000	6.69	2	Goebel	540,205	.62
Falstaff	4,868,000	5.56	3	Falls City	540,000	.62
Carling	4,307,000	4.92	4	Krueger	525,000	.60
Ballantine	4,225,000	4.83	5	West End	461,000	.53
Pabst-Blatz 2/	4,194,321	4.79	6	Goetz	447,000	.51
Hamm	3,670,000	4.19	7	Maier	426,011	.49
Schaefer	3,026,000	3.46	8	Ortlieb	401,000	.46
Liebmann	2,785,000	3.18	9	Heileman	395,000	.45
Miller	2,379,000	2.72	10	Hand, Peter	387,000	.44
Lucky Lager	2,243,000	2.56	11	Canadian Ace	352,655	.40
Stroh	2,112,000	2.41	12	Regal Pale	351,843	.40
Schmidt	1,744,000	1.99	13	Storz	348,000	.40
Coors	1,647,840	1.88	14	Oertel	340,000	.39
Drewrys	1,625,750	1.86	15	Erie	324,237	.37
Ruppert	1,490,000	1.70	16	Latrobe	298,000	.34
Piel	1,460,000	1.67	17	Hampden-Harvard	290,000	.33
National	1,342,000	1.53	18	Stegmaier	284,000	.32
Olumpia	1,335,000	1.52	19	Standard-		
Duquesne	1,097,000	1.25	20	Rochester	271,000	.31
Jackson	1,025,000	1.17	21	Schoenling	270,000	.31
Burgermeister	999,000	1.14	22	Atlantic	261,000	.30
Pearl	979,000	1.12	23	Esslinger	260,000	.30
Narragansett	939,000	1.07	24	Kingsbury	253,000	.29
International	927,000	1.06	25	Pilsener	252,000	.29
Pfeiffer	899,826	1.03	26	Fitzgerald	245,000	.28
Lone Star	805,794	.92	27	Horlacher	211,936	.24
Pittsburgh	804,848	.92	28	Lion, Inc.	211,205	.24
Gunther	800,000	.91	29	Fox Head	211,000	.24
Genesee	789,000	.90	30	Neuweiler's	197,856	.23
Wiedemann	775,000	.89	31	Queen City	195,000	.22
Hudepohl	650,000	.74	32	Bavarian	190,000	.22
Minneapolis	640,000	.73	33	American-Balt.	180,000	.21
Sterling	630,000	.72	34	Buckeye	180,000	.21
Burger	595,000	.68	35	Blitz-Weinhard	177,000	.20

1. Computed as percentage of taxpaid withdrawals: 87,558,974

2. Pabst Records Show:

Pabst	2,060,775
Blatz	2,133,546

(continued)

SALES OF BEER IN THE UNITED STATES
(continued)

1959

Barrels	%	RANK	Brewery	Barrels	%	RANK
171,165	.20	70	Jones	85,500	.10	103
171,000	.20	71	Globe	85,000	.10	104
170,000	.19	72	Missoula	82,000	.09	105
167,586	.19	73	Diamond Springs	80,000	.09	106
160,000	.18	74	Grace	77,000	.09	107
			Leinenkugel	77,000	.09	107
160,000	.18	74	Tivoli	76,000	.09	109
150,000	.17	76	Eastern	75,000	.09	110
150,000	.17	76	Fehr	75,000	.09	111
150,000	.17	76	Gulf	74,000	.08	112
			Pilsen	70,000	.08	113
145,000	.17	79	Henner	70,000	.08	114
141,000	.16	80	Enterprise	65,000	.07	115
140,000	.16	81	F & S	64,480	.07	116
136,710	.16	82	Metz	64,000	.07	117
134,000	.15	83	Oconto	62,812	.07	118
131,138	.15	84	Home	60,000	.07	119
127,000	.15	85	Oshkosh	59,281	.07	120
123,032	.14	86	Tampa	56,000	.06	121
120,000	.14	87	Columbia	54,000	.06	122
114,000	.13	88	Pitger	50,000	.06	123
110,000	.13	89	Rahr-Green Bay	48,414	.06	124
108,000	.12	90	Pacific	47,000	.05	125
107,000	.12	91	Becker	45,000	.05	126
104,000	.12	92	Century	45,000	.05	127
104,000	.12	92	Fesenmeier	45,000	.05	128
101,764	.12	94	Silver Springs	45,000	.05	129
101,596	.12	95	Spearman	44,000	.05	130
98,900	.11	96	Potosi	44,000	.05	131
96,000	.11	97	Hornell	41,000	.05	132
			Huber	40,800	.05	133
95,000	.11	98	Fauerbach	40,000	.05	134
92,000	.11	99	Reisch	40,000	.05	135
90,000	.10	100	Warsaw	40,000	.05	136
88,139	.10	101	Worcester	40,000	.05	137
87,000	.10	102	Walter, George	39,014	.04	138

(continued)

[fol. 212] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-40

SALES OF BEER IN THE UNITED STATES

1959

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Sebewaing	37,000	.04	139	Rice Lake	18,000	.02
Stevens Point	36,892	.04	140	Cold Spring	15,000	.02
West Bend	36,000	.04	141	Wausau	14,000	.02
Peoples	33,697	.04	142	Two Rivers	11,000	.01
Walter(EauClaire)	33,000	.04	143	Men.-Marinette	10,402	.01
Progress	30,488	.03	144	Geyer	10,230	.01
Dubuque	30,000	.03	145	Effinger	10,049	.01
Schell	29,352	.03	146	Fleckenstein	10,000	.01
Star Union	29,000	.03	147	Straub	10,000	.01
Hauenstein	25,000	.03	148	Mankato	10,000	.01
Mountain	25,000	.03	149	Marathon	9,933	.01
Mt. Carbon	24,000	.03	150	Berlin	9,786	.01
Butte	23,802	.03	151	Marshfield	8,000	.00
Rhinelander	22,352	.03	152	Fountain	7,000	.00
Sieben	22,000	.03	153	Pischback	6,000	.00
Spoetzl	20,590	.02	154	Mineral Springs	5,000	.00
Duluth	20,000	.02	155	Altoona	4,000	.00
Northern	20,000	.02	155	Bartels	4,000	.00
Bub, Peter	18,000	.02	157	Weber, G.	2,000	.00
				Anchor	1,000	.00

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-41

SALES OF BEER IN THE UNITED STATES

1960

[illegible]	Barrels	1/ %	RANK	Brewery	Barrels	%	RANK
.-Busch	8,480,000	9.65	1	Krueger	551,250	.63	36
litz	5,640,000	6.42	2	Falls City	544,000	.62	37
staff	4,910,000	5.59	3	Sicks' Rainier	530,000	.60	38
ling	4,790,000	5.45	4	Maier	523,586	.60	39
lantine	4,383,000	4.99	5	West End	486,000	.55	40
t-Blatz 2/	4,378,570	4.98	6	Goetz	438,000	.50	41
	3,907,040	4.45	7	Hand, Peter	402,000	.46	42
afer	3,101,000	3.53	8	Canadian Ace	400,000	.46	43
mann	2,690,000	3.06	9	Atlantic	400,000	.46	43
er	2,314,000	2.63	10	Goebel	393,246	.45	45
y Lager	2,168,000	2.47	11	Ortlieb	366,000	.42	46
h	2,102,000	2.39	12	Storz	351,000	.40	47
e	1,907,000	2.17	13	E & B	333,803	.38	48
idt	1,811,000	2.06	14	Regal Pale	312,818	.36	49
rys	1,638,800	1.87	15	Latrobe	280,000	.32	50
pla	1,496,895	1.70	16	Stegmaier	270,000	.31	51
	1,486,000	1.69	17	Standard-Rochester	265,000	.30	52
nal	1,355,000	1.54	18	Erie	260,000	.30	53
ert	1,305,000	1.49	19	American-Balt.	250,000	.28	54
me	1,067,000	1.21	20	Oertel	250,000	.28	54
l	1,026,000	1.17	21	Hampden-Harvard	232,000	.26	56
on	1,012,000	1.15	22	Schoenling	225,000	.26	57
gansett	941,000	1.07	23	Queen City	215,000	.24	58
rmeister	931,000	1.06	24	Pilsener	210,000	.24	59
rnational	918,000	1.04	25	Horlacher	196,577	.22	60
ffer	917,804	1.04	26	Esslinger	195,000	.22	61
Star	895,111	1.02	27	Blitz-Weinhard	187,762	.21	62
burgh	806,000	.92	28	Lion, Inc.	187,000	.21	63
see	805,000	.92	29	Neuweiler's	183,773	.21	64
pohl	805,000	.92	29	Fox Head	183,172	.21	65
mann	700,000	.80	31	Buckeye	180,000	.20	66
man	670,000	.76	32	Fitzgerald	180,000	.20	66
apolis	660,000	.75	33	Arizona	166,200	.19	68
ling	652,000	.74	34	Haffenreffer	163,000	.19	69
r	650,000	.74	35				

Computed as percentage of taxpaid withdrawals:
87,856,524

Pabst Records Show:

Pabst 1,952,130
Blatz 2,426,440

(continued)

[fol. 214]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-42

SALES OF BEER IN THE UNITED STATES
(continued)

1960

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Old Reading	160,000	.18	70	Diamond Springs	73,000	.08
Metropolis of New Jersey	155,000	.18	71	Eastern	70,000	.08
American-New Orleans	143,000	.16	72	Renner	69,000	.08
Great Falls	141,639	.16	73	Haberle-Congress	68,000	.08
Ind.-Milwaukee	139,000	.16	74	Tivoli	67,100	.08
Gettelman	132,284	.15	75	Pilsen	67,000	.08
Van Merritt	124,807	.14	76	Metz	66,000	.08
Grace	122,294	.14	77	F & S	65,942	.08
Sunshine	121,000	.14	78	August Wagner	65,000	.08
Dawson's	110,000	.13	79	Enterprise	60,000	.07
Fehr	110,000	.13	79	Home	60,000	.07
Kaier	108,000	.12	81	Oshkosh	59,281	.07
Simon	108,000	.12	81	Warsaw	58,000	.07
Bosch	101,642	.12	83	Gulf	57,000	.07
Cleveland-Sandusky	100,000	.11	84	Oconto	56,800	.07
Globe	100,000	.11	84	Century	50,000	.06
DuBois	100,000	.11	84	Columbia	50,000	.06
Gluek	100,000	.11	84	Rahr-Green Bay	48,066	.06
Standard	100,000	.11	84	Fesenmeier	47,483	.06
Walter (Pueblo)	96,910	.11	89	Huber	46,030	.06
Hull	94,300	.11	90	Pitger	45,000	.06
Best	92,000	.10	91	Spearman	45,000	.06
Eagle	90,376	.10	92	Potosi	41,000	.05
Hedrick	88,000	.10	93	Becker	40,000	.05
Jones	85,807	.10	94	Walter, George	39,529	.05
Koch	85,000	.10	95	Tampa	39,000	.05
Yuenling	85,000	.10	95	Fauerbach	38,000	.05
Dixie	83,713	.10	97	Stevens Point	36,092	.05
Gretz*	83,000	.09	98	Bartels	36,000	.05
Missoula	81,980	.09	99	West Bend Lithia	36,000	.05
Camden	80,000	.09	100	Walter(EauClaire)	35,000	.05
Centlivre	75,000	.09	101	Dubuque	32,000	.04
Leinenkugel	74,609	.08	102	Peoples	32,000	.04
				August Schell	31,566	.04
				Sebewaing	31,495	.04
				Cold Spring	28,000	.04

* 11 month figure

(continued)

SALES OF BEER IN THE UNITED STATES
(continued)

1960

Brewery	Barrels	%	RANK
enstein	28,000	.03	138
r Union	27,000	.03	140
Carbon	25,000	.03	141
ver Springs	24,000	.03	142
etzl	23,070	.03	143
thern	22,000	.03	144
elander	21,166	.02	145
uth	20,000	.02	146
ntain	20,000	.02	146
ben	20,000	.02	146
te	17,500	.02	149
Lake	17,000	.02	150
Peter	17,000	.02	150
ester	17,000	.02	150
ell	15,000	.02	153
ch	14,000	.02	154
Wausau	12,000	.01	155
Berlin	10,000	.01	156
Fleckenstein	10,000	.01	156
Straub	10,000	.01	156
Marathon	9,586	.01	159
Effinger	9,542	.01	160
Geyer	9,000	.01	161
Mankato	9,000	.01	161
Two Rivers	9,000	.01	161
Men.-Marinette	8,426	.01	164
Marshfield	8,000	.01	165
Fountain	7,130	.01	166
Altoona	6,000	.01	167
Golden Glow	6,000	.01	167
Fischback	5,000	.01	169
Mineral Springs	4,000	.005	170
Weber, G.	2,000	.002	171

[fol. 216] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-44

SALES OF BEER IN THE UNITED STATES

1961

Brewery	Barrels	% 1/	RANK	Brewery	Barrels	%
Anh.-Busch	8,500,000	9.55	1	Falls City	525,000	.5
Schlitz	5,775,688	6.49	2	West End	515,000	.5
Pabst-Blatz 2/	5,192,062	5.83	3	Maier	484,965	.5
Falstaff	5,120,000	5.75	4	Sicks' Rainier	473,000	.5
Carling	5,047,323	5.67	5	Hand, Peter	440,000	.4
Ballantine	4,510,000	5.06	6	Atlantic	414,865	.4
Hamm	3,714,144	4.17	7	Canadian Ace	398,000	.4
Schaefer	3,286,550	3.69	8	Ortlieb	358,000	.4
Liebmann	2,987,146	3.35	9	Storz	335,000	.3
Miller	2,706,806	3.04	10	Oertel	330,000	.3
Coors	2,303,000	2.59	11	E & B	316,741	.3
Lucky Lager	2,238,000	2.51	12	Latrobe	310,000	.3
Stroh	2,029,300	2.28	13	Goebel	303,493	.3
Schmidt	1,854,842	2.08	14	Metropolis	300,000	.3
Olympia	1,558,000	1.75	15	Stegmaier	286,000	.3
Drewrys	1,457,812	1.64	16	Standard-Rochester	275,000	.3
Pearl	1,429,068	1.60	17	Erie	265,000	.3
National	1,375,000	1.54	18	Wagner	260,000	.2
Piel	1,360,000	1.53	19	Schoenling	245,000	.2
Ruppert	1,200,000	1.35	20	Esslinger	233,664	.2
Narragansett	1,094,000	1.23	21	Regal Pale	223,000	.2
Duquesne	1,007,261	1.13	22	Blitz-Weinhard	216,000	.2
Jackson	964,100	1.08	23	Buckeye	210,000	.2
Pfeiffer	930,073	1.04	24	Queen City	208,000	.2
Lone Star	901,505	1.01	25	Hampden-Harvard	193,000	.2
Genesee	880,000	.99	26	Horlacher	187,043	.2
International	864,000	.97	27	Standard	180,000	.2
Pittsburgh	780,000	.88	28	Haffenreffer	180,000	.2
Burgermeister	727,906	.82	29	Pilsener	178,000	.2
Hudepohl	719,000	.81	30	Lion, Inc.	176,500	.2
Minneapolis	703,890	.79	31	Neuweiler's	173,700	.2
Sterling	665,000	.75	32	Old Reading	170,300	.1
Burger	650,000	.73	33	Arizona	161,000	.1
Heileman	643,010	.72	34			
Wiedemann	635,000	.71	35			

1. Computed as percentage of taxpaid withdrawals: 88,976,417

2. Pabst Records Show:

Pabst	2,667,346
Blatz	2,524,716

(continued)

SALES OF BEER IN THE UNTIED STATES

1961 (continued)

Brewery	Barrels	%	RANK
Tivoli	60,686	.07	103
Camden County	60,000	.07	104
Best	59,000	.07	105
Huber	56,293	.06	106
Warsaw	56,000	.06	107
Metz	56,000	.06	107
Enterprise	55,000	.06	109
Gulf	54,000	.06	110
Oshkosh	51,529	.06	111
Columbia	51,000	.06	112
Fitger	50,000	.06	113
Fesenmeier	45,000	.05	114
Oconto	44,981	.05	115
Potosi	43,331	.05	116
Becker	43,000	.05	117
Haberle-Congress	40,000	.04	118
Rahr-Green Bay	38,583	.04	119
Walter (Appleton)	38,469	.04	120
Bartels	36,059	.04	121
Stevens Point	35,275	.04	122
Walter (Eau Claire)	35,255	.04	123
Duluth	35,000	.04	124
Fauerbach	34,414	.04	125
West Bend	31,619	.04	126
Peoples	31,591	.04	127
Dubuque	31,000	.03	128
Schell	30,000	.03	129
Cold Spring	30,000	.03	129
Worcester	29,000	.03	131
Sebewaing	28,800	.03	132
Star Union	26,000	.03	133
Hauenstein	25,000	.03	134
Renner	25,000	.03	134

(continued)

[fol. 218] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-46

SALES OF BEER IN THE UNTIED STATES

1961 (continued)

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Silver Springs	25,000	.03	134	Straub	10,000	.01
Spoetzl	23,793	.03	137	Dakota	10,000	.01
Mount Carbon	22,000	.02	138	Effinger	9,912	.01
Rhinelander	21,806	.02	139	Two Rivers	9,711	.01
Sieben	20,000	.02	140	Marathon	9,306	.01
Northern	19,986	.02	141	Geyer	8,833	.01
Peter Bub	18,000	.02	142	Fountain	8,562	.01
Butte	18,000	.02	142	Tampa Florida	8,000	.01
Reisch	17,000	.02	144	Marshfield	7,973	.01
Rice Lake	15,512	.02	145	Fischbach	6,000	.01
Altoona	15,000	.02	146	Wausau	3,000	.003
Berlin	11,000	.01	147	Mineral Spring	1,000	.001
Mankato	10,000	.01	148	Valley	1,000	.001
Fleckenstein	10,000	.01	148			

[fol. 219] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-47

SALES OF PABST AND BLATZ

1949

State	PABST	BLATZ
Alabama	41841	7329
Arizona	11175	2273
Arkansas	43992	3885
California	989639	88129
Colorado	25269	5089
Connecticut	29568	12463
Delaware	13753	2361
Dist. of Columbia	34772	3363
Florida	112891	39597
Georgia	83428	12306
Idaho	12290	6736
Illinois	539313	263996
Indiana	47916	16277
Iowa	137717	76849
Kansas	78498	12332
Kentucky	21192	4952
Louisiana	28821	18211
Maine	14729	5884
Maryland	27997	2057
Massachusetts	54427	16913
Michigan	76826	75208
Minnesota	29302	13885
Mississippi	41946	2649
Missouri	78446	12405
Montana	17524	7492
Nebraska	94865	11493
Nevada	6205	7835
New Hampshire	10435	2306
New Jersey	101396	17906
New Mexico	29263	14833
New York	323959	116229
North Carolina	72528	14573
North Dakota	17302	8413
Ohio	105513	29499
Oklahoma	53545	3176
Oregon	17511	2292
Pennsylvania	91330	24248
Rhode Island	11396	1538
South Carolina	57390	8125
South Dakota	18952	2530
Tennessee	46101	5580
Texas	180378	40331
Utah	6046	2079
Vermont	6022	3799
Virginia	127749	10011
Washington	32255	1794
West Virginia	13915	2050
Wisconsin	302556	491626
Wyoming	16494	10715
Total	4336378	1545622

[fol. 220] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-48

SALES OF PABST AND BLATZ

1950

State	PABST	BLATZ
Alabama	41155	9335
Arizona	8164	2105
Arkansas	34147	2130
California	854556	85477
Colorado	23380	3598
Connecticut	27129	13220
Delaware	12861	2196
Dist. of Columbia	31947	3101
Florida	106459	38711
Georgia	88843	11070
Idaho	7302	6531
Illinois	523161	275015
Indiana	41149	16858
Iowa	135405	81868
Kansas	63673	7952
Kentucky	25793	7204
Louisiana	29684	23186
Maine	9943	6287
Maryland	26067	3793
Massachusetts	52528	18839
Michigan	65977	99834
Minnesota	24110	14079
Mississippi	35351	667
Missouri	68620	7388
Montana	15933	6584
Nebraska	89619	13551
Nevada	8327	7368
New Hampshire	7873	2045
New Jersey	88768	22522
New Mexico	25066	12386
New York	181498	67816
North Carolina	67471	17725
North Dakota	12974	11691
Ohio	80905	40934
Oklahoma	37032	4126
Oregon	13425	2770
Pennsylvania	78181	22882
Rhode Island	10716	2011
South Carolina	52160	5945
South Dakota	15171	1918
Tennessee	42614	10058
Texas	135561	51865
Utah	4374	2094
Vermont	3826	1577
Virginia	107763	11607
Washington	25931	2210
West Virginia	12243	2323
Wisconsin	295203	574302
Wyoming	13357	11317
Total	3763395	1650071

[fol. 221]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-49

SALES OF PABST AND BLATZ

1951

State	PABST	BLATZ
Alabama	52796	11522
Arizona	11163	4399
Arkansas	38168	3720
California	735839	75517
Colorado	25413	5846
Connecticut	31641	14666
Delaware	13543	2095
Dist. of Columbia	32243	2604
Florida	124915	41298
Georgia	102139	11718
Idaho	6521	3766
Illinois	563853	272906
Indiana	48286	17895
Iowa	128786	75186
Kansas	70309	6715
Kentucky	27860	10370
Louisiana	31903	24301
Maine	13176	5032
Maryland	33566	8608
Massachusetts	56998	20617
Michigan	84056	114574
Minnesota	28097	14653
Mississippi	35997	2275
Missouri	66152	7165
Montana	16757	5643
Nebraska	88197	12818
Nevada	9128	6081
New Hampshire	11029	1834
New Jersey	102017	25241
New Mexico	23502	9049
New York	212778	57042
North Carolina	88929	27959
North Dakota	15894	9188
Ohio	89116	43607
Oklahoma	39922	788
Oregon	13168	1210
Pennsylvania	99405	31510
Rhode Island	11588	1576
South Carolina	62314	7073
South Dakota	15331	1854
Tennessee	43478	9489
Texas	139129	55690
Utah	4910	1965
Vermont	3679	581
Virginia	125688	17516
Washington	25680	1492
West Virginia	12130	1487
Wisconsin	271682	567726
Wyoming	12700	9414
Total	3901571	1665281

[fol. 222] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-50

SALES OF PABST AND BLATZ

1952

State	PABST	BLATZ
Alabama	52274	6915
Arizona	11291	2364
Arkansas	33870	1852
California	709977	54670
Colorado	22169	3474
Connecticut	40157	11377
Delaware	15289	1572
Dist. of Columbia	32415	2729
Florida	124511	38462
Georgia	100348	11569
Idaho	3374	2124
Illinois	592317	254992
Indiana	67706	15946
Iowa	136176	68158
Kansas	76829	4732
Kentucky	25827	8300
Louisiana	29781	22379
Maine	15077	4909
Maryland	46982	6747
Massachusetts	79727	16704
Michigan	107850	98370
Minnesota	28863	12591
Mississippi	32016	838
Missouri	78801	4627
Montana	16477	5897
Nebraska	85015	9329
Nevada	8119	4155
New Hampshire	14953	1847
New Jersey	103833	22768
New Mexico	19352	5375
New York	229240	60025
North Carolina	87247	14047
North Dakota	11046	9231
Ohio	97754	38941
Oklahoma	29205	-
Oregon	12464	671
Pennsylvania	164304	40780
Rhode Island	15333	1490
South Carolina	75668	5817
South Dakota	15284	1481
Tennessee	35014	5902
Texas	99718	28876
Utah	4225	1286
Vermont	4385	160
Virginia	130698	18016
Washington	21686	509
West Virginia	17591	1593
Wisconsin	301914	607589
Wyoming	12664	9337
Total	4076816	1551523

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-51

SALES OF PABST AND BLATZ

1953

State	PABST	BLATZ
Alabama	47997	5536
Arizona	7116	1028
Arkansas	27965	888
California	700077	25822
Colorado	19068	1096
Connecticut	42044	6448
Delaware	13805	911
Dist. of Columbia	28281	3676
Florida	117109	23081
Georgia	90282	10868
Idaho	3124	661
Illinois	606206	155054
Indiana	76300	10931
Iowa	134644	42611
Kansas	62115	1737
Kentucky	21789	4961
Louisiana	26685	11868
Maine	12619	3096
Maryland	42178	3858
Massachusetts	79701	9000
Michigan	131581	74731
Minnesota	24844	4406
Mississippi	23165	160
Missouri	81240	2447
Montana	10360	2609
Nebraska	70254	4065
Nevada	5034	2198
New Hampshire	13636	721
New Jersey	100607	12668
New Mexico	12085	2431
New York	204443	32348
North Carolina	93096	15840
North Dakota	6860	4416
Ohio	105284	22688
Oklahoma	24877	508
Oregon	10785	215
Pennsylvania	151492	16936
Rhode Island	13314	436
South Carolina	72348	6657
South Dakota	10319	762
Tennessee	34926	4881
Texas	92243	7406
Utah	4444	514
Vermont	3499	8
Virginia	134886	9094
Washington	21262	88
West Virginia	16632	867
Wisconsin	283347	430285
Wyoming	9789	5772
Total	3925757	989288

[fol. 224] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-52

SALES OF PABST AND BLATZ

1954

State	PABST	BLATZ
Alabama	31116	5665
Arizona	4003	324
Arkansas	21586	413
California	602478	12080
Colorado	15632	320
Connecticut	37514	3592
Delaware	10187	634
Dist. of Columbia	20472	7056
Florida	83753	28865
Georgia	78643	12907
Idaho	4356	-
Illinois	507380	167426
Indiana	55827	8781
Iowa	108446	37229
Kansas	49724	786
Kentucky	14054	3792
Louisiana	17192	5587
Maine	12318	1434
Maryland	34279	1553
Massachusetts	68549	6483
Michigan	101043	67695
Minnesota	19786	2269
Mississippi	14948	38
Missouri	75401	905
Montana	6519	1047
Nebraska	50718	3810
Nevada	3044	1029
New Hampshire	12481	296
New Jersey	93234	13375
New Mexico	5560	838
New York	181140	20235
North Carolina	80112	20146
North Dakota	4501	2559
Ohio	67663	6822
Oklahoma	17046	1256
Oregon	13237	-
Pennsylvania	120974	12578
Rhode Island	8558	-
South Carolina	76074	9653
South Dakota	8419	1395
Tennessee	25493	4146
Texas	42588	3795
Utah	5995	-
Vermont	2283	-
Virginia	109939	11322
Washington	15922	-
West Virginia	11505	733
Wisconsin	304036	427609
Wyoming	7305	5105
Total	3263033	923583

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-53

SALES OF PABST AND BLATZ

1955

State	PABST	BLATZ
Alabama	31571	5276
Arizona	3065	110
Arkansas	22925	-
California	541239	7371
Colorado	13108	-
Connecticut	36456	5844
Delaware	9248	198
Dist. of Col.	19930	5108
Florida	81563	31830
Georgia	69419	15263
Idaho	3967	-
Illinois	479975	161534
Indiana	53616	12237
Iowa	100991	35602
Kansas	41183	-
Kentucky	11971	2724
Louisiana	15744	3696
Maine	16912	781
Maryland	35737	1185
Massachusetts	81753	5421
Michigan	107851	71920
Minnesota	23749	2346
Mississippi	14359	-
Missouri	51946	647
Montana	5219	596
Nebraska	46021	3972
Nevada	3464	451
New Hampshire	15666	15
New Jersey	95822	11797
New Mexico	4308	604
New York	181763	17559
North Carolina	77850	20614
North Dakota	5523	1810
Ohio	65206	3495
Oklahoma	12398	142
Oregon	15085	-
Pennsylvania	109090	14293
Rhode Island	8478	-
South Carolina	72434	12402
South Dakota	8788	786
Tennessee	23038	3562
Texas	38812	2181
Utah	8567	-
Vermont	2672	-
Virginia	100018	7511
Washington	20128	-
W. Virginia	10420	119
Wisconsin	324596	432510
Wyoming	5808	4324
Total	3129452	907836

[fol. 226] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-54

SALES OF PABST AND BLATZ

1956

State	PABST	BLATZ
Alabama	24856	4923
Arizona	4416	-
Arkansas	20316	-
California	615974	14784
Colorado	15275	-
Connecticut	33854	5351
Delaware	8624	633
Dist. of Col.	18007	9185
Florida	73704	21131
Georgia	68271	16360
Idaho	3829	-
Illinois	440344	138140
Indiana	49960	34271
Iowa	85793	28021
Kansas	39739	74
Kentucky	8480	2330
Louisiana	14545	2518
Maine	17000	463
Maryland	32630	3460
Massachusetts	70999	2769
Michigan	93995	140430
Minnesota	25814	1488
Mississippi	12769	-
Missouri	37026	2066
Montana	4638	245
Nebraska	34421	2349
Nevada	2809	225
New Hampshire	13998	-
New Jersey	84236	13810
New Mexico	4048	790
New York	168082	26614
North Carolina	74481	18876
North Dakota	6100	973
Ohio	59637	12677
Oklahoma	11942	-
Oregon	12792	1736
Pennsylvania	94061	12616
Rhode Island	6549	-
South Carolina	64125	9521
South Dakota	9689	187
Tennessee	26688	1441
Texas	43998	2546
Utah	8616	-
Vermont	2403	-
Virginia	95694	5363
Washington	24294	5941
W. Virginia	8755	96
Wisconsin	333539	389410
Wyoming	5737	3428
Total	3017552	937241

[fol. 227]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-55

SALES OF PABST AND BLATZ

1957

State	PABST	BLATZ
Alabama	18561	4345
Arizona	3219	-
Arkansas	13388	-
California	539084	17653
Colorado	14477	-
Connecticut	25051	5810
Delaware	6524	437
Dist. of Col.	14487	12928
Florida	56192	28513
Georgia	49303	12186
Idaho	1065	-
Illinois	361579	139707
Indiana	39442	56795
Iowa	73978	30391
Kansas	29922	-
Kentucky	6579	1702
Louisiana	12571	1506
Maine	13176	116
Maryland	31289	9212
Massachusetts	62928	409
Michigan	74928	298672
Minnesota	22345	2645
Mississippi	9966	-
Missouri	27008	793
Montana	2660	163
Nebraska	23374	2189
Nevada	1543	101
New Hampshire	13298	-
New Jersey	69694	23171
New Mexico	2363	852
New York	142936	51373
North Carolina	58995	20912
North Dakota	3496	540
Ohio	45012	80247
Oklahoma	8200	-
Oregon	7239	1898
Pennsylvania	85138	21215
Rhode Island	4855	293
South Carolina	54776	7203
South Dakota	7380	176
Tennessee	18365	-
Texas	26739	2425
Utah	7680	-
Vermont	1708	-
Virginia	82875	7394
Washington	23020	4059
W. Virginia	5501	-
Wisconsin	340378	388678
Wyoming	4165	2625
Total	2548452	1239334

[fol. 228]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-56

SALES OF PABST AND BLATZ

1958

State	PABST	BLATZ
Alabama	13312	3816
Arizona	1426	-
Arkansas	9207	1372
California	584679	28896
Colorado	10799	307
Connecticut	18191	6207
Delaware	4795	538
Dist. of Col.	10906	15191
Florida	32850	31476
Georgia	32728	15935
Idaho	1430	-
Illinois	290189	177989
Indiana	33652	95696
Iowa	60893	32796
Kansas	21588	516
Kentucky	3412	2412
Louisiana	6696	1125
Maine	8972	-
Maryland	25379	15023
Massachusetts	51637	3639
Michigan	73338	505351
Minnesota	19704	4300
Mississippi	4868	165
Missouri	18394	18934
Montana	1662	-
Nebraska	20238	5042
Nevada	959	-
New Hampshire	11157	-
New Jersey	63524	31688
New Mexico	1395	1006
New York	143607	58378
North Carolina	45236	22750
North Dakota	2611	551
Ohio	33015	173493
Oklahoma	4595	-
Oregon	5721	1992
Pennsylvania	71763	26732
Rhode Island	3438	436
South Carolina	41058	9690
South Dakota	5557	331
Tennessee	10152	1546
Texas	20106	2174
Utah	5942	-
Vermont	793	-
Virginia	66183	10948
Washington	16289	1473
W. Virginia	3818	1574
Wisconsin	333244	403437
Wyoming	2893	2504
Total	2254001	1717489

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-57

SALES OF PABST AND BLATZ

1959

State	PABST	BLATZ
Alabama	13775	3803
Arizona	1212	618
Arkansas	8134	3408
California	473454	80604
Colorado	6690	3968
Connecticut	14852	8674
Delaware	3910	988
Dist. of Col.	9958	17924
Florida	24668	33639
Georgia	26687	23412
Idaho	1710	115
Illinois	284762	192695
Indiana	33592	135711
Iowa	62176	30448
Kansas	14180	3173
Kentucky	4280	6771
Louisiana	4357	2066
Maine	8920	793
Maryland	22840	22390
Massachusetts	47076	15786
Michigan	60876	60[illegible]50
Minnesota	19601	7700
Mississippi	5300	2889
Missouri	16936	11483
Montana	1254	991
Nebraska	20498	10583
Nevada	689	93
New Hampshire	10927	2128
New Jersey	61853	24289
New Mexico	1538	714
New York	121895	71591
North Carolina	45188	25935
North Dakota	2699	1180
Ohio	26654	271020
Oklahoma	2886	502
Oregon	4423	541
Pennsylvania	65822	37518
Rhode Island	2672	593
South Carolina	35977	13199
South Dakota	5753	466
Tennessee	9402	3654
Texas	11963	10745
Utah	4294	1459
Vermont	447	1073
Virginia	58143	14980
Washington	14205	1148
W. Virginia	3851	5671
Wisconsin	374764	416322
Wyoming	3027	2233
Total	2060775	2133546

[fol. 230] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-58

SALES OF PABST AND BLATZ

1960

State	PABST	BLATZ
Alabama	11419	3691
Arizona	1818	902
Arkansas	11309	2603
California	417040	126233
Colorado	7520	3505
Connecticut	13385	7593
Delaware	2828	669
Dist. of Col.	7439	17529
Florida	20233	39077
Georgia	24670	26737
Idaho	2282	1367
Illinois	269749	196628
Indiana	33595	173184
Iowa	59346	30198
Kansas	11664	3844
Kentucky	3751	10070
Louisiana	5839	4372
Maine	9029	2155
Maryland	19068	25784
Massachusetts	49619	11904
Michigan	53712	705516
Minnesota	18134	9428
Mississippi	4638	1999
Missouri	19273	7685
Montana	1027	974
Nebraska	19910	9204
Nevada	397	159
New Hampshire	10481	2479
New Jersey	59256	29634
New Mexico	1998	931
New York	107695	74110
North Carolina	36745	29928
North Dakota	2693	1357
Ohio	23410	338984
Oklahoma	484	2025
Oregon	3190	157
Pennsylvania	55674	44349
Rhode Island	2179	499
South Carolina	26646	11564
South Dakota	5738	344
Tennessee	8222	3878
Texas	14114	16984
Utah	3267	1971
Vermont	621	398
Virginia	40607	12418
Washington	15138	468
W. Virginia	3269	5061
Wisconsin	429402	424327
Wyoming	2607	1564
Total	1952130	2426440

Joint Exhibit No. JX-59

SALES OF PABST AND BLATZ

1961

State	Pabst	Blatz
Alabama	31297	3245
Arizona	6074	759
Arkansas	14880	1809
California	515454	129769
Colorado	4749	771
Connecticut	13213	5569
Delaware	2313	573
Dist. of Col.	22324	12653
Florida	59618	33306
Georgia	68143	20902
Idaho	2736	490
Illinois	255440	196860
Indiana	30602	208381
Iowa	56724	30340
Kansas	16231	3185
Kentucky	3109	15350
Louisiana	8155	4285
Maine	8015	994
Maryland	49941	18721
Massachusetts	54415	9047
Michigan	44339	792143
Minnesota	16882	9431
Mississippi	6343	1390
Missouri	21109	6246
Montana	1224	780
Nebraska	19881	10836
Nevada	295	177
New Hampshire	11391	2128
New Jersey	173246	24210
New Mexico	1337	1014
New York	255479	54150
North Carolina	86153	22127
North Dakota	1760	700
Ohio	18623	379628
Oklahoma	1482	688
Oregon	2614	(3)
Pennsylvania	53253	44816
Rhode Island	2167	538
South Carolina	54467	5729
South Dakota	5824	238
Tennessee	29940	1687
Texas	34590	20937
Utah	3021	1272
Vermont	748	353
Virginia	99984	9024
Washington	17332	170
W. Virginia	2568	6225
Wisconsin	475490	429772
Wyoming	2371	1698
Total	2667346	2524716

[fol. 232] IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-60

SALES OF BEER IN WISCONSIN

1955

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Anheuser-Busch	79,981	2.58	9	Metropolis	196	.0
Atlantic	23,557	.76	28	Miller	218,258	7.0
Ballantine	2,633	.08	59	Minneapolis	23,671	.7
Berlin	9,100	.29	42	Mineral Springs	6,167	.2
Best	1,559	.05	62	Monarch	1	*
Blatz	434,404	14.01	1	National	233	.0
Bohemian	32,699	1.05	21	Northern	11,497	.3
Bosch	5,852	.19	50	Oconto	44,296	1.4
Bub, Peter	1,044	.03	64	Oshkosh	54,390	1.7
Canadian Ace	7,183	.23	47	Pabst	325,849	10.5
Carling	4,411	.14	54	Peoples(Duluth)	540	.0
Drewry's	46,167	1.50	14	Peoples(Oshkosh)	34,968	1.1
Dubuque	276	.01	69	Pilsen	107	*
Duluth	1,699	.05	60	Potosi	14,273	.4
Effinger	13,969	.45	37	Rahr-Green Bay	31,560	1.0
Eulberg	11,128	.36	41	Rahr-Oshkosh	3,553	.1
Fauerbach	29,356	.95	23	Rhinelander	16,323	.5
Fitger	5,665	.18	51	Rice Lake	17,678	.5
Fountain	3,825	.12	56	Schlitz	357,683	11.5
Fox Head	27,503	.89	24	Schmidt	17,355	.5
Fox, Peter	20,583	.66	29	Standard	975	.0
Frankenmuth	19	*	75	Star Union	1,352	.0
Gettelman	95,273	3.07	8	Stevens Point	39,391	1.2
Gluek	1,608	.05	61	Storck	8,154	.2
Goebel	4,806	.16	53	Stroh	189	.0
Hamm's	250,721	8.09	4	Two Rivers	14,008	.4
Hand, Peter	16,358	.53	32	Uchtorff	760	.0
Heileman	174,997	5.65	6	United	461	.0
Huber	11,985	.39	39	Walter (Appleton)	38,633	1.2
Ind.-Milwaukee	57,420	1.85	11	Walter(EauClaire)	32,951	1.0
International	5	*	76	Walter (Menasha)	15,794	.5
Jung	8,284	.27	43	Wausau	23,608	.7
Kingsbury	104,081	3.36	7	Weber, G.	3,334	.1
Knapstein	7,221	.23	46	Weber-Waukesha	56,555	1.8
LaCrosse	24,347	.79	25	West Bend	37,329	1.2
Leinenkugel	72,412	2.34	10	White	50	*
Marathon	7,981	.26	45	Wisconsin Brewing	5,605	.1
Marshfield	7,176	.23	48	Non-brewery importers	17,260	.5
Mathie Ruder	4,191	.14	55			
Men.-Marinette	13,196	.43	38	TOTAL	3,099,682	99.9

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-61

SALES OF BEER IN WISCONSIN
(Broken down between Draft and Package Beer)

1955

Brewery	Draft Beer Barrels	% (1)	Package Beer Barrels	% (2)
euser-Busch	17,420	1.42	62,561	3.34
antic	26	*	23,531	1.26
lantine			2,633	.14
lin	2,799	.23	6,301	.34
t	5	*	1,554	.08
tz	178,182	14.54	256,222	13.67
nian	331	.03	32,368	1.73
ch	2,085	.17	3,767	.20
, Peter	322	.03	722	.04
dian Ace	15	*	7,168	.38
ling			4,411	.24
wry's	9,461	.77	36,706	1.96
uque	7	*	269	.01
uth	169	.01	1,530	.08
inger	8,040	.66	5,929	.32
berg	588	.05	10,540	.56
rbach	14,881	1.21	14,475	.77
ger	2,646	.22	3,019	.16
ntain	1,105	.09	2,720	.15
Head	15,527	1.27	11,976	.64
, Peter	8,883	.72	11,700	.62
nkenmuth	3	*	16	*
telman	60,036	4.90	35,237	1.88
k	470	.04	1,138	.06
el	759	.06	4,047	.22
s	85,795	7.00	164,926	8.80
, Peter	5,360	.44	10,998	.59
eman	40,161	3.28	134,836	7.20
r	3,537	.29	8,448	.45
-Milwaukee	23,718	1.93	33,702	1.80
rnational			5	*
	5,216	.43	3,068	.16
sbury	51,722	4.22	52,359	2.79
stein	2,794	.23	4,427	.24
rosse	10,635	.87	13,712	.73
enkugel	32,636	2.66	39,776	2.12
thon	5,262	.43	2,719	.15
hfield	4,067	.33	3,109	.17
le Ruder	1,967	.16	2,224	.12
-Marinette	4,889	.40	8,307	.44
polis			196	.01
er	98,429	8.03	119,829	6.39
apolis	10,689	.87	12,982	.69
al Springs	1,523	.12	4,644	.25
rch			1	*

% of Total Draft Beer Sales
of Total Package Beer Sales
ess than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-62

SALES OF BEER IN WISCONSIN (Continued)
Page 2 of 2

1955

Brewery	Draft Beer Barrels	%	Package Beer Barrels	
National			233	
Northern	3,827	.31	7,670	
Oconto	14,933	1.22	29,363	1
Oshkosh	17,885	1.46	36,505	1
Pabst	147,196	12.01	178,653	9
Peoples (Duluth)	70	.01	470	
Peoples (Oshkosh)	15,146	1.24	19,822	1
Pilsen	52	*	55	
Potosi	5,055	.41	9,218	
Rahr-Green Bay	11,242	.92	20,318	1
Rahr-Oshkosh	2,406	.20	1,147	
Rhinelander	6,951	.57	9,372	
Rice Lake	10,903	.89	6,775	
Schlitz	140,119	11.43	217,564	11
Schmidt	9,196	.75	8,159	
Standard			975	
Star Union			1,352	
Stevens Point	14,556	1.19	24,835	1
Storck	1,620	.13	6,534	
Stroh			189	
Two Rivers	8,562	.70	5,446	
Uchtorff			760	
United States	40	*	421	
Walter (Appleton)	17,616	1.44	21,017	1
Walter (Eau Claire)	15,578	1.27	17,373	
Walter (Menasha)	5,678	.46	10,116	
Wausau	11,943	.97	11,665	
Weber, G.	1,423	.12	1,911	
Weber-Waukesha	29,383	2.40	27,172	1
West Bend	17,907	1.46	19,422	1
White Bear	31	*	19	
Wisconsin Brewing			5,605	
Non-Brewery Importers	4,398	.36	12,862	
TOTAL	1,225,876	100.03	1,873,806	100

Recapitulation

	Barrels	% Total Sales
Draft Beer Sales	1,225,876	39.55
Package Beer Sales	1,873,806	60.45
TOTAL	3,099,682	100.00

* Less than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-63

SALES OF BEER IN WISCONSIN

1956

ery	Barrels	%	RANK
user-Busch	85,089	2.76	9
ntic	22,493	.73	25
antine	1,232	.04	59
in	8,955	.29	39
	1,033	.03	63
s	392,165	12.72	1
dian	30,845	1.00	24
h	5,046	.16	48
Peter	886	.03	64
eye	109	*	73
dian Ace	3,212	.10	52
ing	4,457	.14	49
y's	50,021	1.62	14
que	341	.01	70
th	1,105	.04	61
ger	12,688	.41	34
erg	11,647	.38	37
oach	31,428	1.02	23
r	5,937	.19	45
ain	2,928	.09	53
ead	41,745	1.35	16
Peter	492	.02	68
lman	99,068	3.21	8
	1,469	.05	57
l	3,400	.11	50
s	339,682	11.01	3
Peter	18,704	.61	28
an	156,554	5.08	6
	12,838	.42	32
ilwaukee	58,161	1.89	11
ational	15	*	74
	7,018	.23	43
ury	119,020	3.86	7
ein	5,917	.19	46
se	3,360	.11	51
kugel	70,225	2.28	10
	1,078	.03	62
on	8,630	.28	41

than .005%

Brewery	Barrels	%	RANK
Marshfield	8,178	.27	42
Men.-Marinette	12,764	.41	33
Metropolis	367	.01	69
Miller	193,969	6.29	5
Mineral Springs	6,090	.20	44
Minneapolis	20,907	.68	27
National	765	.02	65
Northern	11,253	.36	38
Oconto	48,157	1.56	15
Oshkosh	53,699	1.74	13
Pabst	335,032	10.86	4
Peoples (Duluth)	215	.01	71
Peoples (Oshkosh)	34,492	1.12	20
Pilsen	2,240	.07	56
Potosi	18,666	.61	29
Prima	2,680	.09	54
Rahr-Green Bay	32,626	1.06	21
Rahr-Oshkosh	1,251	.04	58
Rhinelander	15,656	.51	31
Rice Lake	17,396	.56	30
Schlitz	361,839	11.73	2
Schmidt	12,155	.39	36
Standard	609	.02	66
Star Union	1,138	.04	60
Stevens Point	40,934	1.32	17
Storck	8,804	.29	40
Stroh	213	.01	72
Two Rivers	12,587	.41	35
Uchtorff	537	.02	67
Walter (Appleton)	[illegible]	[illegible]	[illegible]
Walter (EauClaire)	[illegible]	[illegible]	[illegible]
Walter (Menasha)	5,299	.17	47
Wausau	21,349	.69	26
Weber, G.	2,634	.09	55
Weber-Waukesha	57,508	1.86	12
West Bend	35,977	1.17	18
Non-brewery Importers	19,627	.64	
TOTAL	3,083,970	100.00	

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IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-64

SALES OF BEER IN WISCONSIN
(Broken down between draft and package beer)

1956

Brewery	Draft Beer Barrels	% [1]	Package Beer Barrels
Anheuser-Busch	17,153	1.43	67,936
Atlantic	521	.04	21,972
Ballantine			1,232
Berlin	2,440	.20	6,515
Best			1,033
Blatz	158,796	13.23	233,369
Bohemian	307	.03	30,538
Bosch	1,458	.12	3,588
Bub, Peter	268	.02	618
Buckeye			109
Canadian Ace	4	*	3,208
Carling			4,457
Drewrys	10,398	.87	39,623
Dubuque	1	*	340
Duluth	33	*	1,072
Effinger	7,220	.60	5,468
Fulberg	454	.04	11,193
Fauerbach	14,556	1.21	16,872
Fitger	2,740	.23	3,197
Fountain	835	.07	2,093
Fox Head	20,034	1.67	21,711
Fox, Peter	240	.02	252
Gettelman	61,513	5.12	37,555
Gluek	392	.03	1,077
Goebel	520	.04	2,880
Hamm's	107,857	8.98	231,825
Hand, Peter	6,436	.54	12,268
Heileman	36,724	3.06	119,830
Huber	3,400	.28	9,438
Ind.-Milwaukee	23,195	1.93	34,966
International	3	*	12
Jung	4,254	.35	2,764
Kingsbury	53,703	4.47	65,317
Knapstein	2,018	.17	3,899
La Crosse	1,576	.13	1,784
Leinenkugel	30,772	2.56	39,453
Leisy			1,078
Marathon	5,659	.47	2,971
Marshfield	4,717	.39	3,461
Men.-Marinette	4,898	.41	7,866
Metropolis			367
Miller	89,833	7.48	104,136
Mineral Springs	1,538	.13	4,552
Minneapolis	9,215	.77	11,692
National			765
Northern	3,484	.29	7,769

1 % of total draft beer sales.
2 % of total package beer sales.

*Less than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-65

203

SALES OF BEER IN WISCONSIN
(Broken down between draft and package beer)

1956

Brewery	Draft Beer Barrels	% [1]	Package Beer Barrels	% [2]
ato	15,065	1.25	33,092	1.76
kosh	18,954	1.58	34,745	1.84
t	156,404	13.03	178,628	9.48
les (Duluth)	28	*	187	.01
les (Oshkosh)	15,988	1.33	18,504	.98
en	36	*	2,204	.12
si	7,188	.60	11,478	.61
			2,680	.14
-Green Bay	11,596	.97	21,030	1.12
-Oshkosh	949	.08	302	.02
elander	6,675	.56	8,981	.48
Lake	10,382	.86	7,014	.37
itz	144,368	12.03	217,471	11.55
idt	7,141	.59	5,014	.27
dard			609	.03
Union	1	*	1,137	.06
ens Point	15,497	1.29	25,437	1.35
k	1,442	.12	7,362	.39
			213	.01
Rivers	7,380	.61	5,207	.28
rff	5	*	532	.03
r (Appleton)	16,449	1.37	18,963	1.01
r (Eau Claire)	15,025	1.25	16,927	.90
r (Menasha)	1,946	.16	3,353	.18
u	10,571	.88	10,778	.57
, G.	1,116	.09	1,518	.08
-Waukesha	26,161	2.18	31,347	1.66
Bend	16,420	1.37	19,557	1.04
rewery Importers	4,571	.38	15,056	.80
otal	1,200,523	99.96	1,883,447	100.01

s than .005%

RECAPITULATION

	Barrels	% Total Sales
beer sales	1,200,523	38.93
e beer sales	1,883,447	61.07
tal	3,083,970	100.00

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-66

SALES OF BEER IN WISCONSIN

1957

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Anheuser-Busch	96,218	3.14	8	Marshfield	8,422	.27
Atlantic	22,280	.73	26	Men.-Marinette	12,542	.41
Ballantine	1,236	.04	55	Metropolis	131	*
Berlin	8,170	.27	42	Miller	178,250	5.81
Best	1,053	.03	57	Mineral Springs	6,150	.20
Blatz	392,722	12.81	1	Minneapolis	24,946	.81
Bohemian	28,173	.92	24	Monarch	203	.01
Bosch	4,473	.15	49	National	875	.03
Bub, Peter	696	.02	61	Northern	10,502	.34
Canadian Ace	1,083	.04	58	Oconto	52,220	1.70
Carling	4,963	.16	47	Oshkosh	54,145	1.77
Drewry's	55,082	1.80	12	Pabst	341,779	11.14
Dubuque	423	.01	63	Peoples(Duluth)	49	*
Duluth	1,046	.03	59	Peoples(Oshkosh)	33,534	1.09
E & B	439	.01	62	Pilsen	5,415	.18
Effinger	11,515	.38	35	Potosi	20,619	.67
Eulberg	11,298	.37	36	Prima	3,103	.10
Fauerbach	35,608	1.16	18	Rahr-Green Bay	35,088	1.14
Fitger	6,328	.21	43	Rhinelander	18,129	.59
Fountain	2,521	.08	51	Rice Lake	16,664	.54
Fox Head	38,012	1.24	17	Schlitz	357,055	11.64
Gettelman	85,128	2.78	9	Schmidt	10,852	.35
Gluek	1,883	.06	54	Standard	161	.01
Goebel	2,151	.07	53	Star Union	1,109	.04
Hamm's	372,515	12.15	2	Stevens Point	39,237	1.28
Hand, Peter	18,697	.61	28	Storck	10,396	.34
Heileman	122,650	4.00	7	Stroh	240	.01
Huber	13,644	.44	32	Two Rivers	12,293	.40
Ind.-Milwaukee	58,988	1.92	11	Walter(EauClaire)	31,069	1.01
Jung	5,915	.19	45	Walter (Appleton)	35,363	1.15
Keeley	264	.01	64	Wausau	17,635	.58
Kingsbury	133,556	4.36	6	Weber, G.	2,185	.07
Knapstein	4,942	.16	48	Weber-Waukesha	51,821	1.69
Leinenkugel	70,643	2.30	10	West Bend	34,452	1.12
Marathon	9,620	.31	40	Non-brewery importers	16,121	.53
				TOTAL	3,066,690	99.98

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-67

SALES OF BEER IN WISCONSIN
(Broken down between draft and package beer)

1957

Brewery	Draft Beer Barrels	% [1]	Package Beer Barrels	% [2]
user-Busch	24,040	1.98	72,178	3.89
ntic			22,280	1.20
antine			1,236	.07
in	2,229	.18	5,941	.32
			1,053	.06
z	161,413	13.31	231,309	12.47
ian	244	.02	27,929	1.51
h	1,411	.12	3,062	.17
Peter	202	.02	494	.03
dian Ace			1,083	.06
ing			4,963	.27
rys	10,608	.87	44,474	2.40
que	10	*	413	.02
th	1	*	1,045	.06
B			439	.02
nger	6,663	.55	4,852	.26
erg	359	.03	10,939	.59
rbach	14,640	1.21	20,968	1.13
er	2,669	.22	3,659	.20
tain	660	.05	1,861	.10
Head	17,586	1.45	20,426	1.10
lman	56,844	4.69	28,284	1.53
k	398	.03	1,485	.08
el	427	.04	1,724	.09
's	120,788	9.96	251,727	13.58
, Peter	6,348	.52	12,349	.67
man	30,580	2.52	92,070	4.97
r	3,540	.29	10,104	.54
ilwaukee	22,465	1.85	36,523	1.97
	3,498	.29	2,417	.13
y			264	.01
bury	53,897	4.45	79,659	4.30
tein	1,440	.12	3,502	.19
nkugel	30,332	2.50	40,311	2.17
hon	6,382	.53	3,238	.17
field	4,736	.39	3,686	.20
Marinette	5,254	.43	7,288	.39
polis			131	.01
r	87,807	7.24	90,443	4.88
al Springs	1,313	.11	4,837	.26
apolis	11,120	.92	13,826	.75
ch			203	.01
nal			875	.05
ern	2,896	.24	7,606	.41
o	17,017	1.40	35,203	1.90
sh	20,533	1.69	33,612	1.81

[1] f total draft beer sales.
[2] f total package beer sales.

* than .005%

[fol. 240]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-68

SALES OF BEER IN WISCONSIN

(Broken down between draft and package beer)

1957

Brewery	Draft Beer Barrels	Draft Beer % [1]	Package Barrels
Pabst	166,142	13.70	175,637
Peoples (Duluth)			49
Peoples (Oshkosh)	16,669	1.37	16,865
Pilsen			5,415
Potosi	8,445	.70	12,174
Prima			3,103
Rahr-Green Bay	13,462	1.11	21,626
Rhinelander	6,605	.54	11,524
Rice Lake	10,282	.85	6,382
Schlitz	148,172	12.22	208,883
Schmidt	6,244	.51	4,608
Standard			161
Star Union			1,109
Stevens Point	14,952	1.23	24,285
Storck	1,841	.15	8,555
Stroh			240
Two Rivers	6,893	.57	5,400
Walter (Eau Claire)	13,645	1.13	17,424
Walter (Appleton)	17,186	1.42	18,177
Wausau	8,755	.72	8,880
Weber, G.	1,027	.08	1,158
Weber-Waukesha	22,279	1.84	29,542
West Bend	15,463	1.28	18,989
Non Brewery Importers	4,105	.34	12,016
Total	1,212,517	99.98	1,854,173

RECAPITULATION

	Barrels	% Total Sales
Draft beer sales	1,212,517	39.54
Package beer sales	1,854,173	60.46
Total	3,066,690	100.00

SALES OF BEER IN WISCONSIN

1958

wery	Barrels	%	RANK
rosia	93	*	68
euser-Busch	120,308	3.86	7
antic	24,520	.79	26
lantine	874	.03	57
lin	6,995	.22	41
t	519	.02	61
z	404,297	12.99	1
nian(V. N.)	27,979	.90	24
ch	4,683	.15	48
Peter	592	.02	60
dian Ace	4,165	.13	49
ling	6,192	.20	45
ry's	62,919	2.02	11
que	336	.01	62
th	1,032	.03	55
B	870	.03	58
nger	10,902	.35	36
erg	5,900	.20	46
rbach	37,957	1.22	16
er	6,403	.21	44
tain	2,519	.08	50
Head	35,511	1.14	20
lman	104,676	3.36	9
k	1,768	.06	52
el	1,001	.03	56
's	387,484	12.45	2
, Peter	17,679	.57	29
man	119,064	3.82	8
r	14,167	.46	32
-Milwaukee	58,625	1.88	12
	1,603	.05	54
bury	148,450	4.77	6
stein	6,545	.21	43
nkugel	72,310	2.32	10
thon	10,406	.33	38
field	8,011	.26	40

Brewery	Barrels	%	RANK
Men.-Marinette	9,618	.31	39
Metropolis	147	*	65
Miller	162,242	5.21	5
Mineral Springs	5,148	.17	47
Minneapolis	26,936	.87	25
Monarch	271	.01	64
National	103	*	66
Northern	10,709	.34	37
Oconto	56,810	1.82	14
Oshkosh	56,975	1.83	13
Pabst	334,088	10.73	4
Peoples	33,422	1.07	21
Pilsen	11,472	.37	34
Potosi	20,615	.66	28
Prima	1,634	.05	53
Queen City	102	*	67
Rahr-Green Bay	35,715	1.15	19
Rhinelander	21,454	.69	27
Rice Lake	16,717	.54	30
Schlitz	352,433	11.32	3
Schmidt	11,868	.38	33
Standard	302	.01	63
Star Union	870	.03	58
Stevens Point	37,573	1.21	17
Storck	6,673	.21	42
Stroh	70	*	69
Two Rivers	11,449	.37	35
Walter(EauClaire)	31,660	1.02	23
Walter (Appleton)	36,990	1.19	18
Wausau	14,428	.46	31
Weber, G.	2,162	.07	51
Weber-Waukesha	38,418	1.23	15
West Bend	32,441	1.04	22
Non-brewery importers	14,064	.45	
TOTAL	3,112,934	99.98	

igure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-70

SALES OF BEER IN WISCONSIN
(Broken down between Draft and Package Beer)

1958

Brewery	Draft Beer Barrels	% (1)	Package Beer Barrels	
Ambrosia			93	
Anheuser-Busch	35,203	2.80	85,105	4
Atlantic	100	.01	24,420	1
Ballantine			874	
Berlin	1,860	.15	5,135	
Best			519	
Blatz	181,627	14.45	222,670	12
Bohemian (Van Merritt)	58	.01	27,921	1
Bosch	1,423	.11	3,260	
Bub, Peter	160	.01	432	
Canadian Ace			4,165	
Carling			6,192	
Drewry's	10,760	.86	52,159	2
Dubuque			336	
Duluth			1,032	
E. & B.			870	
Effinger	6,570	.52	4,332	
Eulberg	128	.01	5,772	
Fauerbach	14,721	1.17	23,236	1
Fitger	2,137	.17	4,266	
Fountain	675	.05	1,844	
Fox Head	13,825	1.10	21,686	1
Gettelman	54,207	4.31	50,469	2
Gluek	343	.03	1,425	
Goebel	85	.01	916	
Hamm's	135,525	10.78	251,959	13
Hand, Peter	6,330	.50	11,349	
Heileman	35,243	2.80	83,821	4
Huber	3,817	.30	10,350	
Ind.-Milwaukee	22,213	1.77	36,412	1
Jung	940	.07	663	
Kingsbury	56,063	4.46	92,387	4
Knapstein	1,036	.08	5,509	
Leinenkugel	30,509	2.43	41,801	2
Marathon	6,992	.56	3,414	
Marshfield	4,574	.36	3,437	
Men.-Marinette	3,765	.30	5,853	
Metropolis			147	
Miller	84,137	6.69	78,105	4
Mineral Springs	864	.07	4,284	
Minneapolis	10,884	.87	16,052	
Monarch			271	
National			103	
Northern	2,182	.17	8,527	
Oconto	18,060	1.44	38,750	2
Oshkosh	20,929	1.66	36,046	1

(1) % of Total Draft Beer Sales
(2) % of Total Package Beer Sales

ALES OF BEER IN WISCONSIN (Continued)
age 2 of 2

1958

Brewery	Draft Beer Barrels	%	Package Beer Barrels	%
bst	177,648	14.13	156,440	8.43
eoples	16,754	1.33	16,668	.90
ilsen			11,472	.62
otosi	7,784	.62	12,831	.69
rima			1,634	.09
ueen City			102	.01
ahr-Green Bay	14,926	1.19	20,789	1.12
hinelander	6,818	.54	14,636	.79
ice Lake	10,458	.83	6,259	.34
chlitz	152,588	12.14	199,845	10.77
chmidt	6,461	.51	5,407	.29
tandard			302	.02
tar Union			870	.05
tevens Point	13,698	1.09	23,875	1.29
tork	1,163	.09	5,510	.30
troh	31	*	39	*
wo Rivers	6,266	.50	5,183	.28
alter (Eau Claire)	13,572	1.08	18,088	.97
alter (Appleton)	18,138	1.44	18,852	1.02
ausau	7,098	.56	7,330	.40
eber G.	1,119	.09	1,043	.06
eber-Waukesha	16,342	1.30	22,076	1.19
est Bend	14,841	1.18	17,600	.95
on-Brewery Importers	3,688	.29	10,376	.56
TOTAL	1,257,338	99.99	1,855,596	100.07

Recapitulation

	Barrels	% of Total Sales
raft Beer Sales	1,257,338	40.39
ackage Beer Sales	1,855,596	59.61
TOTAL	3,112,934	100.00

Less than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-72

SALES OF BEER IN WISCONSIN

1959

Brewery	Barrels	%	RANK	Brewery	Barrels	
Anheuser-Busch	153,460	4.80	4	Marathon	9,930	
Atlantic	25,504	.80	24	Marshfield	7,852	
Ballantine	1,995	.06	47	Men.-Marinette	4,951	
Berlin	9,776	.31	37	Metropolis	274	
Best	302	.01	57	Miller	143,631	4.
Bohemian(V.M.)	26,959	.84	23	Mineral Springs	4,245	
Bosch	5,639	.18	42	Minneapolis	28,105	
Bub, Peter	747	.02	53	Northern	12,939	
Buckeye	76	*	60	Oconto	59,071	1.
Canadian Ace	6,693	.21	40	Oshkosh	59,281	1.
Carling	7,765	.24	39	Pabst-Blatz**	793,313	24.
Drewry's	67,025	2.10	11	Peoples	33,697	1.
Duluth	1,528	.05	48	Pilsen	12,839	
Dubuque	343	.01	56	Potosi	19,998	
E & B	867	.03	52	Rahr-Green Bay	40,341	1.
Effinger	10,049	.31	34	Rhinelander	20,325	
Fauerbach	39,485	1.23	16	Rice Lake	15,441	
Fitger	6,676	.21	41	Schlitz	359,853	11.
Fountain	2,281	.07	45	Schmidt	13,357	
Fox Head	67,817	2.12	10	Standard	387	
Gettelman	115,293	3.60	8	Star Union	396	
Gluek	1,479	.05	49	Stevens Point	36,593	1.
Goebel	955	.03	51	Stroh	1,379	
Hamm's	391,518	12.24	2	Two Rivers	10,048	
Hand, Peter	16,468	.51	27	Walter(EauClaire)	32,144	1.
Heileman	126,698	3.96	7	Walter (Appleton)	38,956	1.
Huber	14,918	.47	29	Wausau	12,156	
Ind.-Milwaukee	58,182	1.82	14	Weber, G.	2,015	
Knapstein	107	*	59	West Bend	33,034	1.
Kingsbury	147,246	4.60	5	Non-brewery		
Leinenkugel	73,763	2.31	9	importers	10,416	
				TOTAL	3,198,581	99.

** Case Reports Show:
Pabst: 374,763
Blatz: 416,325

* Figure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-73

SALES OF BEER IN WISCONSIN
(Broken down between Draft and Package Beer)

1959

Brewery	Draft Beer Barrels	Draft Beer % (1)	Package Beer Barrels	Package Beer % (2)
euser-Busch	45,114	3.54	108,346	5.63
antic	406	.03	25,098	1.30
lantine			1,995	.10
lin	2,783	.22	6,993	.36
t			302	.02
ian (Van Merritt)	925	.07	26,034	1.35
h	1,790	.14	3,849	.20
, Peter	277	.02	470	.02
eye			76	*
dian Ace			6,693	.35
ling	36	*	7,729	.40
ey's	9,440	.74	57,585	2.99
th	5	*	1,523	.08
que	1	*	342	.02
B.			867	.05
nger	6,042	.47	4,007	.21
rbach	13,900	1.09	25,585	1.33
er	1,929	.15	4,747	.25
tain	600	.05	1,681	.09
Head	22,170	1.74	45,647	2.37
lman	54,782	4.30	60,511	3.15
k	339	.03	1,140	.06
el	305	.02	650	.03
's	138,814	10.89	252,704	13.14
. Peter	5,218	.41	11,250	.58
man	41,801	3.28	84,897	4.41
r	3,329	.26	11,589	.60
-Milwaukee	22,455	1.76	35,727	1.86
stein	47	*	60	*
sbury	53,229	4.17	94,017	4.89
enkugel	30,293	2.38	43,470	2.26
thon	6,737	.53	3,193	.17
hfield	4,469	.35	3,383	.18
-Marinette	1,884	.15	3,067	.16
polis			274	.01
er	73,611	5.77	70,020	3.64
al Springs	624	.05	3,621	.19
apolis	10,138	.80	17,967	.93
ern	1,882	.15	11,057	.57
to	17,765	1.39	41,306	2.15
osh	21,234	1.67	38,047	1.98
t-Blatz	388,068	30.43	405,245	21.07
les	15,908	1.25	17,789	.92
en			12,839	.67
t	7,322	.57	12,676	.66
-Green Bay	16,269	1.28	24,072	1.25

(1) % of Total Draft Beer Sales
(2) % of Total Package Beer Sales

* Less than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-74

SALES OF BEER IN WISCONSIN (Continued)
Page 2 of 2

1959

Brewery	Draft Beer Barrels	Draft Beer %	Package Beer Barrels	Package Beer %
Rhinelander	5,893	.46	14,432	
Rice Lake	9,485	.74	5,956	
Schlitz	155,424	12.19	204,429	10.
Schmidt	6,107	.48	7,250	
Standard			387	
Star Union			396	
Stevens Point	12,974	1.02	23,619	1.
Stroh	1,088	.09	291	
Two Rivers	5,412	.42	4,636	
Walter (Eau Claire)	13,595	1.07	18,549	
Walter (Appleton)	19,050	1.49	19,906	1.
Wausau	5,735	.45	6,421	
Weber, G.	1,087	.09	928	
West Bend	14,557	1.14	18,477	
Non-Brewery Importers	2,880	.23	7,536	
TOTAL	1,275,228	100.02	1,923,353	99.

Recapitulation

	Barrels	% Total Sales
Draft Beer Sales	1,275,228	39.87
Package Beer Sales	1,923,353	60.13
TOTAL	3,198,581	100.00

SALES OF BEER IN WISCONSIN

1960

	Barrels	%	RANK	Brewery	Barrels	%	RANK
r-Busch	181,773	5.56	5	Marshfield	7,946	.24	39
lc	22,340	.68	23	Men.-Marinette	4,365	.13	42
ine	1,971	.06	44	Metropolis	472	.01	52
	9,433	.29	36	Miller	142,010	4.35	6
	62	*	57	Mineral Springs	3,695	.11	43
	7,248	.22	40	Minneapolis	29,005	.89	21
er	621	.02	51	Northern	13,370	.41	29
	66	*	56	Oconto	53,892	1.65	13
n Ace	9,022	.28	38	Oshkosh	54,392	1.66	12
	10,826	.33	31	Pabst-Blatz**	854,064	26.14	1
s	69,631	2.13	9	Peoples	33,000	1.01	19
	348	.01	53	Pilsen	10,075	.31	33
	1,550	.05	46	Potosi	19,840	.61	24
	58	*	58	Rahr-Green Bay	39,302	1.20	15
r	9,542	.29	35	Rhinelander	19,007	.58	25
ch	37,952	1.16	16	Rice Lake	14,714	.45	28
	7,169	.22	41	Schlitz	358,685	10.98	3
n	1,901	.06	45	Schmidt	12,309	.38	30
d	63,328	1.94	10	Standard	95	*	55
an	117,503	3.60	7	Star Union	284	.01	54
	1,197	.04	48	Stevens Point	35,901	1.10	17
	983	.03	49	Stroh	774	.02	50
	403,350	12.34	2	Two Rivers	9,073	.28	37
eter	16,182	.50	26	Van Merritt	26,747	.82	22
n	270,445	8.28	4	Walter(EauClaire)	34,541	1.06	18
	15,203	.47	27	Walter(Appleton)	39,529	1.21	14
dent-				Wausau	10,587	.32	32
ee	55,637	1.70	11	Weber, G.	1,507	.05	47
ugel	72,522	2.22	8	West Bend	30,721	.94	20
n	9,585	.29	34	Non-brewery importers	9,962	.30	
				TOTAL	3,267,312	99.99	

eports Show:
429,398
424,324

less than .005%

[fol. 248]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-76

SALES OF BEER IN WISCONSIN
(Broken down between Draft and Package Beer)

1960

Brewery	Draft Beer Barrels	% (1)	Package Beer Barrels	%
Anheuser-Busch	55,100	4.31	126,673	6.37
Atlantic	578	.05	21,762	1.09
Ballantine			1,971	.10
Berlin	2,624	.21	6,809	.34
Best			62	*
Bosch	2,579	.20	4,669	.23
Bub, Peter	130	.01	491	.02
Buckeye			66	*
Canadian Ace			9,022	.45
Carling	91	.01	10,735	.54
Drewry's	8,647	.68	60,984	3.07
Dubuque	1	*	347	.02
Duluth	21	*	1,529	.08
E. & B.			58	*
Effinger	5,626	.44	3,916	.20
Fauerbach	11,109	.87	26,843	1.35
Fitger	1,888	.15	5,281	.27
Fountain	510	.04	1,391	.07
Fox Head	14,656	1.15	48,672	2.45
Gettelman	55,990	4.38	61,513	3.09
Gluek	301	.02	896	.05
Goebel	214	.02	769	.04
Hamm's	146,207	11.43	257,143	12.93
Hand, Peter	4,287	.34	11,895	.60
Heileman	89,552	7.00	180,893	9.10
Huber	2,931	.23	12,272	.62
Ind-Milwaukee	21,611	1.69	34,026	1.71
Leinenkugel	29,219	2.28	43,303	2.18
Marathon	6,364	.50	3,221	.16
Marshfield	4,452	.35	3,494	.18
Men.-Marinette	1,157	.09	3,208	.16
Metropolis			472	.02
Miller	73,915	5.78	68,095	3.42
Mineral Springs	537	.04	3,158	.16
Minneapolis	9,592	.75	19,413	.98
Northern	1,606	.13	11,764	.59
Oconto	15,998	1.25	37,894	1.91
Oshkosh	19,279	1.51	35,113	1.77
Pabst-Blatz	409,472	32.01	444,592	22.36
Peoples	15,464	1.21	17,536	.88
Pilsen			10,075	.51
Potosi	6,670	.52	13,170	.66
Rahr-Green Bay	15,817	1.24	23,485	1.18
Rhinelander	5,252	.41	13,755	.69
Rice Lake	8,874	.69	5,840	.28
Schlitz	151,678	11.86	207,007	10.41

(1) % of Total Draft Beer Sales
(2) % of Total Package Beer Sales * Less than .005%

S OF BEER IN WISCONSIN (Continued)
2 of 2

1960

Brewery	Draft Beer Barrels	%	Package Beer Barrels	%
dt	5,186	.41	7,123	.36
ard			95	.01
Union			284	.01
ns Point	12,086	.94	23,815	1.20
	560	.04	214	.01
ivers	4,761	.37	4,312	.22
erritt	562	.04	26,185	1.32
r (Eau Claire)	14,330	1.12	20,211	1.02
r (Appleton)	19,676	1.54	19,853	1.00
	4,540	.35	6,047	.30
, G.	815	.06	692	.03
end	13,432	1.05	17,289	.87
ewery Importers	3,197	.25	6,765	.34
OTAL	1,279,144	100.02	1,988,168	99.99

Recapitulation

	Barrels	% Total Sales
Beer Sales	1,279,144	
e Beer Sales	1,988,168	
OTAL	3,267,312	100.00

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-78

SALES OF BEER IN WISCONSIN

1961

Brewery	Barrels	%	RANK
Anheuser-Busch	188,934	5.72	6
Atlantic	20,916	.63	22
Ballantine	1,671	.05	42
Berlin	9,624	.29	35
Bosch	7,418	.22	39
Bub	485	.01	47
Buckeye	205	.01	53
Canadian Ace	9,629	.29	34
Carling	12,094	.36	30
Drewrys	70,406	2.13	8
Dubuque	302	.01	50
Duluth	1,511	.05	43
Effinger	9,912	.30	32
Fauerbach	34,414	1.04	16
Fitger	7,712	.23	38
Fountain	2,557	.08	41
Fox Head	69,614	2.11	9
Gluek	1,123	.03	44
Goebel	695	.02	46
Hamm	395,342	11.97	2
Peter Hand	20,283	.61	23
Heileman	269,927	8.17	5
Huber	16,953	.51	26
Inde. Milw.	50,198	1.52	11
Leinenkugel	71,475	2.16	7
Marathon	9,301	.28	36
Marshfield	7,973		
Men.-Marinette	221		
Metropolis	454		
Miller	276,141	8.	
Mineral Spring	773		
Minneapolis	32,250		
Northern	11,947		
Oconto	42,591	1.	
Oshkosh	51,199	1.	
Pabst-Blatz**	905,470	27.	
Peoples	31,580		
Pfeiffer	12,441		
Pilsen	12,387		
Potosi	20,269		
Rahr	32,378		
Rhinelander	19,050		
Rice Lake	13,887		
Schlitz	359,428	10.	
Star Union	286		
Stevens Point	35,276	1.	
Stroh	346		
Two Rivers	9,711		
Van Merritt	27,330		
Walter(Appleton)	38,469	1.	
Walter (Eau Claire)	34,976	1.	
Wausau	3,192		
Weber	202		
West Bend Lithia	27,619		
Non-brewery Importers	12,466		
Total	3,303,013	99.	

**Pabst Records Show:
Pabst 475,490
Blatz 429,772

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-79

SALES OF BEER IN WISCONSIN

(Broken down between Draft and Package Beer)

1961

Brewery	Draft Beer Barrels	% (1)	Package Beer Barrels	% (2)
euser-Busch	60,027	4.63	128,907	6.42
antic	850	.07	20,066	1.00
lantine			1,671	.08
lin	2,826	.22	6,798	.34
ch	2,894	.22	4,524	.23
, Peter	103	.01	382	.02
keye			205	.01
adian Ace			9,629	.48
ling	13	*	12,081	.60
ery's	7,291	.56	63,115	3.14
oque	1	*	301	.01
uth	89	.01	1,422	.07
inger	5,467	.42	4,445	.22
rbach	8,903	.69	25,511	1.27
ger	1,800	.14	5,912	.29
ntain	596	.05	1,961	.10
Head	7,629	.59	61,985	3.09
k	276	.02	847	.04
el	129	.01	566	.03
's	154,163	11.90	241,179	12.01
r Hand	3,884	.30	16,399	.82
eman	88,083	6.80	181,844	9.06
r	2,706	.21	14,247	.71
-Milwaukee	20,123	1.55	30,075	1.50
enkugel	28,883	2.23	42,592	2.12
thon	5,962	.46	3,339	.17
hfield	3,964	.31	4,009	.20
Marinette	55	*	166	.01
opolis			454	.02
er	140,070	10.81	136,071	6.78
ral Springs	121	.01	652	.03
eapolis	10,271	.79	21,979	1.09
hern	1,261	.10	10,686	.53
to	11,596	.90	30,995	1.54
osh	17,348	1.34	33,851	1.69
t-Blatz	431,768	33.33	473,702	23.60
les	14,858	1.15	16,722	.83
idt	4,906	.38	7,535	.38
en			12,387	.62
si	6,364	.49	13,905	.69
-Green Bay	12,578	.97	19,800	.99
elander	4,683	.36	14,367	.72
Lake	8,304	.64	5,583	.28
itz	154,469	11.92	204,959	10.21
Union			286	.01
ens Point	11,508	.89	23,768	1.18

% of Total Draft Beer Sales
% of Total Package Beer Sales

* Less than .005%

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-80

SALES OF BEER IN WISCONSIN (Continued)
Page 2 of 2

1961

Brewery	Draft Beer Barrels	Draft Beer %	Package Bee Barrels
Stroh	241	.02	105
Two Rivers	5,491	.42	4,220
Van Merritt	599	.05	26,731
Walter (Appleton)	19,555	1.51	18,914
Walter (Eau Claire)	14,760	1.14	20,216
Wausau	1,225	.09	1,967
Weber	109	.01	93
West Bend	12,449	.96	15,170
Non-Brewery Importers	4,151	.32	8,315
TOTAL	1,295,402	100.00	2,007,611

Recapitulation

	Barrels	% Total Sales
Draft Beer Sales	1,295,402	39.22
Package Beer Sales	2,007,611	60.78
TOTAL	3,303,013	100.00

SALES OF BEER IN MICHIGAN

1957

...wery	Barrels	%	RANK	Brewery	Barrels	%	RANK
...euser-Busch	167,890	3.22	9	Leisy	545	.01	47
...lantic	2,160	.04	33	Men.-Marinette	11,544	.22	23
...lantine	6,575	.13	28	Metropolis	3,049	.06	32
...t	25,854	.50	17	Miller	77,400	1.48	13
...tz	298,727	5.72	6	Minneapolis	1,728	.03	34
...mian	49	*	53	Monarch	597	.01	46
...h	79,787	1.53	12	National	184,452	3.53	8
...eye	19,188	.37	20	Oconto	1,620	.03	35
...tzardt	7,758	.15	27	Pabst	74,934	1.44	14
...dian Ace	1,242	.02	40	Peoples	103	*	50
...ling	299,404	5.74	5	Pfeiffer	532,996	10.21	3
...tlivre	3,377	.06	31	Pilsen	98	*	51
...e.-Sandusky	18,925	.36	21	Pilsener	1,405	.03	37
...ry's	484,188	9.28	4	Queen City	4,311	.08	30
...B	115,424	2.21	11	Rahr-Green Bay	473	.01	48
...taff	43,929	.84	15	Rhinelander	1,216	.02	41
...er	75	*	52	Renner	1,249	.02	38
...Pitt	632	.01	45	Schlitz	163,671	3.14	10
...Head	1,469	.03	36	Sebewaing	38,140	.73	16
...r	9,874	.19	25	Standard	10,237	.20	24
...k	315	.01	49	Sterling	2	*	56
...el	614,289	11.77	2	Stroh	1,620,195	31.04	1
...'s	15,713	.30	22	Terre Haute	19,973	.38	18
..., Peter	8,568	.16	26	Van Merritt	13	*	55
...leman	855	.02	43	Walter, George	668	.01	44
...-Milwaukee	19,733	.38	19	Weber-Waukesha	22	*	54
...rnational	189,015	3.62	7	Wisconsin Brewing	1,249	.02	38
...sbury	5,025	.10	29	Non-brewery			
...obe	929	.02	42	importers	26,492	.51	
				TOTAL	5,219,351	99.99	

...igure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-82

SALES OF BEER IN MICHIGAN

1958

Brewery	Barrels	%	RANK	Brewery	Barrels
Ambrosia	27	*	53	Latrobe	1,223
Anheuser-Busch	188,276	3.72	7	Leisy	4,311
Atlantic	22,576	.45	19	Men.-Marinette	9,532
Ballantine	6,516	.13	31	Metropolis	2,715
Best	20,389	.40	21	Miller	92,172
Blatz	500,333	9.89	3	Minneapolis	7,623
Bosch	95,433	1.89	12	National	153,904
Buckeye	30,362	.60	18	Oconto	2,293
Burkhardt	11,516	.23	26	Pabst	73,338
Canadian Ace	5,758	.11	32	Pfeiffer	471,721
Carling	418,019	8.26	6	Pilsen	17
Centlivre	3,652	.07	36	Pilsener	7,743
Cleve.-Sandusky	20,370	.40	22	Pittsburgh	3,791
Drewry's	561,151	11.09	2	Queen City	5,421
E & B	98,788	1.95	11	Rahr-Green Bay	1,316
F & S	140	*	51	Rhinelander	1,215
Falstaff	46,081	.91	15	Renner	3,149
Fitger	53	*	52	Schlitz	165,272
Fox Head	879	.02	45	Sebewaing	41,926
Gettelman	1,617	.03	41	Standard	18,976
Geyer	12,418	.25	25	Stroh	1,178,669
Gluek	309	.01	50	Van Merritt-(Bohemian)	684
Goebel	478,595	9.46	4	Walter, George	748
Hamm's	17,415	.34	24	Weber-Waukesha	1,686
Hand, Peter	21,709	.43	20	Wisconsin Brewing	479
Heileman	599	.01	48	Non-brewery importers	26,193
Ind.-Milwaukee	41,911	.83	17		
International	173,033	3.42	8		
Kingsbury	6,667	.13	30	TOTAL	5,060,709

* Figure is under .005%.

SALES OF BEER IN MICHIGAN

1959

ewery	Barrels	%	RANK
heuser-Busch	207,104	3.96	8
llantic	11,732	.22	20
llantine	5,751	.11	26
varian	226	*	48
t	16,855	.32	19
ch	94,026	1.80	12
keye	23,035	.44	16
richardt	10,225	.20	24
adian Ace	3,022	.05	34
rling	486,691	9.30	4
tlivre	2,727	.05	35
ve.-Sandusky	9,548	.18	25
wry's	556,344	10.63	3
B	158,212	3.02	10
S	111	*	51
staff	45,518	.87	14
Head	667	.01	43
telman	645	.01	44
er	10,546	.20	23
ek	1,053	.02	40
bel	432,880	8.27	6
n's	17,694	.34	18
d, Peter	11,487	.22	22
leman	534	.01	45
.-Milwaukee	19,250	.37	17
ernational	136,567	2.61	11
sbury	3,351	.06	31
obe	1,169	.02	39

Brewery	Barrels	%	RANK
Leisy	253	*	47
Men.-Marinette	5,611	.11	27
Metropolis	3,312	.06	32
Miller	81,376	1.55	13
Minneapolis	4,905	.09	28
National	179,476	3.43	9
Oconto	3,746	.07	30
Pabst-Blatz**	666,720	12.74	2
Pfeiffer	463,033	8.84	5
Pilsen	7	*	52
Pilsener	2,669	.05	36
Pittsburgh	815	.02	41
Queen City	3,991	.08	29
Rahr-Green Bay	1,473	.03	37
Renner	3,257	.06	33
Rhinelander	723	.01	42
Schlitz	214,394	4.10	7
Sebewaing	37,499	.72	15
Standard	11,639	.22	21
Sterling	396	.01	46
Stroh	1,255,863	23.99	1
Van Merritt-(Bohemian)	1,319	.03	38
Walter, George	148	*	49
Wisconsin Brewing	116	*	50
Non-brewery importers	25,430	.49	
TOTAL	5,235,141	99.99	

Figure is under .005%.
Case Reports Show:
Pabst: 60,876
Blatz: 605,843

[fol. 256]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-84

SALES OF BEER IN MICHIGAN

1960

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Anheuser-Busch	208,281	4.00	8	Latrobe	1,046	.02
Atlantic	38,277	.73	16	Men.-Marinette	4,124	.08
[illegible]llantine	4,451	.09	27	Metropolis	4,863	.09
[illegible]	12,065	.23	20	Miller	76,685	1.47
[illegible]sch	92,602	1.78	12	Minneapolis	2,660	.05
Buckeye	42,406	.81	15	National	185,745	3.56
Burkhardt	7,210	.14	23	Oconto	3,194	.06
Canadian Ace	1,611	.03	37	Pabst-Blatz**	759,226	14.57
Carling	547,826	10.51	3	Pfeiffer	420,132	8.06
Centlivre	2,235	.04	33	Pilsen	395	.01
Century Brewery	115	*	48	Pilsener	3,336	.06
Cleve.-Sandusky	5,167	.10	25	Pittsburgh	1,088	.02
Drewry's	537,195	10.31	4	Queen City	1,860	.04
E & B	324,390	6.22	6	Rahr-Green Bay	1,934	.04
F & S	219	*	46	Renner	1,736	.03
Falstaff	46,054	.88	14	Rhinelander	412	.01
Fox Head	443	.01	42	Schlitz	153,188	2.94
Gettelman	259	*	45	Sebewaing	32,451	.62
Geyer	9,150	.18	22	Standard	6,876	.13
Gluek	1,232	.02	38	Sterling	182	*
Goebel	313,199	6.01	7	Stroh	1,170,598	22.46
Hamm's	17,278	.33	18	Van Merritt-		
Hand, Peter	9,587	.18	21	(Bohemian)	905	.02
Heileman	3,343	.06	29	Non-brewery		
Ind.-Milwaukee	14,248	.27	19	importers	25,384	.49
International	114,293	2.19	11			
				TOTAL	5,211,156	99.95

* Figure under .005%.
** Case Reports Show:
Pabst: 53,714
Blatz: 705,514

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-85

SALES OF BEER IN MICHIGAN

1961

Brewery	Barrels	%	RANK
euser-Busch	196,919	3.76	9
lantic	76,919	1.47	14
lantine	4,047	.08	28
ylin	133	*	45
t	6,912	.13	23
ch	92,514	1.77	13
kaye	40,774	.78	16
ger	8,171	.16	22
dian Ace	539	.01	41
ling	589,400	11.25	3
veland-ndusky	5,023	.10	24
erys	524,356	10.01	4
B	304,013	5.80	6
staff	105,833	2.02	11
Head	57	*	47
mann & Schmidt	144	*	44
er	9,064	.17	21
ek	919	.02	39
el	236,300	4.51	7
n	14,445	.28	18
d, Peter	10,940	.21	20
leman	2,621	.05	31
ell	3,136	.06	30
d. Milw.	11,692	.22	19
ernational	101,186	1.93	12

Brewery	Barrels	%	RANK
Latrobe	843	.02	40
Men. Marinette	(-68)	*	48
Metropolis	4,531	.09	25
Miller	75,603	1.45	15
Minneapolis	3,754	.07	29
National	186,884	3.57	10
Oconto	2,390	.05	32
Old Crown	1,877	.04	34
Pabst-Blatz**	836,473	15.96	2
Pfeiffer	369,542	7.05	5
Pilsen	1,015	.02	38
Pilsener	2,329	.04	33
Pittsburgh	275	.01	43
Queen City	1,186	.02	35
Rahr Green Bay	1,103	.02	36
Renner	4,096	.08	27
Rhinelander	286	.01	42
Schlitz	227,984	4.35	8
Sebewaing	29,494	.56	17
Standard	4,339	.08	26
Sterling	104	*	46
Stroh	1,113,939	21.26	1
Van Merrit	1,088	.02	37
Non-Brewery Importers	25,110	.48	—
TOTAL	5,240,234	100.04	

ess than .005%

abst Records Show
abst 44,339
latz 792,143

[fol. 258]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-86

SALES OF BEER IN ILLINOIS

1957

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Anheuser-Busch	859,818	14.47	2	Leisy	614	.01
Ambrosia	49,489	.83	18	Metropolis	994	.02
Atlantic	71,510	1.20	15	Miller	326,071	5.49
Ballantine	27,549	.46	22	Mineral Springs	189	*
Best	16,400	.28	29	Minneapolis	9,524	.16
Blatz	140,078	2.36	12	Monarch	48,591	.82
Bohemian	54,783	.92	17	National	3,194	.05
Buckeye	1,132	.02	53	Pabst	362,521	6.10
Burger	499	.01	61	Pfeiffer	3,962	.07
Centlivre	3	*	66	Pilsen	65,877	1.11
Canadian Ace	141,258	2.38	11	Potosi	6,093	.10
Carling	281,874	4.74	9	Queen City	545	.01
Drewry's	490,436	8.25	4	Rahr-Green Bay	1,063	.02
Dubuque	794	.01	57	Red Top	2,492	.04
E & B	1,999	.03	49	Reisch	18,541	.31
Eulberg	630	.01	58	Rhinelander	2,701	.05
Falls City	2,872	.05	45	Ruppert	1,666	.03
Falstaff	490,844	8.26	3	Scheidt	5,351	.09
Fitzgerald	242	*	64	Schlitz	958,090	16.12
Fox Head	77,831	1.31	14	Siebens	21,108	.36
Frankenmuth	328	.01	63	Sioux City	466	.01
Gettelman	12,607	.21	30	Standard	1,515	.03
Gluek	3,268	.05	43	Star Peerless	8,930	.15
Goebel	22,724	.38	24	Star Union	29,692	.50
Goetz	3,593	.06	42	Sterling	18,166	.31
GriesedieckBros.	105,798	1.78	13	Stroh	9,509	.16
Hamm's	485,671	8.17	5	Terre Haute	5,879	.10
Hand, Peter	341,426	5.74	7	Warsaw	37,724	.63
Heileman	200,898	3.38	10	Wausau	4,077	.07
Huber	11,930	.20	31	Weber-Waukesha	8,394	.14
Hudepohl	876	.01	56	Wiedemann	2,728	.05
Ind.-Milwaukee	23,832	.40	23	Zeman	9,177	.15
International	1,174	.02	52	Non-brewery		
Keeley	2	*	67	importers	14,781	.25
Kingsbury	19,089	.32	26	Foreign	11,086	.19
				TOTAL	5,944,568	100.00

* Figure is under .005%.

SALES OF BEER IN ILLINOIS

1958

ery	Barrels	%	RANK	Brewery	Barrels	%	RANK
user-Busch	945,762	16.14	2	Mankato	26	*	64
osia	48,192	.82	17	Metropolis	2,027	.03	48
ntic	80,116	1.37	13	Miller	319,233	5.45	7
antine	30,584	.52	21	Mineral Springs	186	*	61
in	477	.01	58	Minneapolis	12,775	.22	30
	10,452	.18	32	Monarch	30,800	.53	19
z	176,324	3.01	12	National	2,495	.04	45
ian	65,711	1.12	14	Oertel	160	*	62
ye	2,696	.05	43	Pabst	291,082	4.97	8
er	1,144	.02	50	Pfeiffer	4,053	.07	39
dian Ace	177,412	3.03	11	Pilsen	60,822	1.04	16
ing	248,974	4.25	9	Potosi	6,272	.11	35
livre	593	.01	57	Queen City	777	.01	53
s	11	*	65	Rahr-Green Bay	2,053	.04	47
ry's	405,800	6.92	5	Reisch	17,544	.30	27
que	1,009	.02	52	Rhinelander	2,553	.04	44
s	617	.01	56	Ruppert	2,328	.04	46
erg	147	*	63	Scheidt	5,679	.10	36
s City	4,015	.07	40	Schlitz	960,033	16.38	1
taff	559,476	9.54	3	Siebens	20,922	.36	25
ead	63,607	1.09	15	Sioux City	303	.01	59
lman	12,424	.21	31	Standard	1,289	.02	49
k	3,388	.06	42	Star Union	30,643	.52	20
l	17,004	.29	28	Sterling	23,536	.40	22
r	4,389	.07	38	Storch	205	*	60
's	501,010	8.55	4	Stroh	8,757	.15	34
, Peter	332,053	5.67	6	Warsaw	39,958	.68	18
man	195,573	3.34	10	Wausau	4,764	.08	37
r	12,911	.22	29	Weber-Waukesha	9,429	.16	33
pohl	756	.01	54	Wiedemann	19,061	.33	26
-Milwaukee	22,324	.38	23	Zeman	3,955	.07	41
rnational	1,135	.02	51	Non-brewery			
sbury	22,079	.38	24	importers	17,228	.29	
stein	665	.01	55	Foreign	12,072	.21	
				TOTAL	5,861,860	100.04	

igure is under .005%.

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-88

SALES OF BEER IN ILLINOIS

1959

Brewery	Barrels	%	RANK
Anh.-Busch	1,077,269	17.94	1
Atlantic	119,318	1.99	12
Ballantine	29,316	.49	17
Berlin	10	*	58
Best	9,092	.15	30
Buckeye	1,738	.03	42
Burger	228	*	50
Canadian Ace	193,770	3.23	11
Carling	234,884	3.91	9
Centlivre	172	*	52
Coors	19	*	57
Drewry's	441,578	7.35	6
Dubuque	953	.02	46
E & B	168	*	53
Falls City	4,351	.07	34
Falstaff	591,033	9.84	3
Fox Head	61,405	1.02	14
Gettelman	13,352	.22	26
Gluek	2,857	.05	36
Goebel	16,046	.27	23
Goetz	4,306	.07	35
Gunther	218	*	51
Hamm's	505,151	8.41	4
Hand, Peter	349,729	5.82	7
Heileman	200,228	3.33	10
Huber	11,852	.20	27
Hudepohl	679	.01	47
Ind.-Milwaukee	21,110	.35	21
International	1,017	.02	45
Kingsbury	19,487	.32	22
Krueger	40	*	56

Brewery	Barrels	%
Metropolis	2,041	.03
Metz	513	.01
Miller	317,591	5.29
Mineral Springs	96	*
Minneapolis	11,793	.20
National	2,307	.04
Oertel	130	*
Pabst-Blatz**	484,296	8.06
Pfeiffer	4,727	.08
Pilsen	57,059	.95
Potosi	7,509	.13
Rahr-Green Bay	2,011	.03
Reisch	15,124	.25
Rhinelander	1,309	.02
Ruppert	2,527	.04
Scheidt	4,971	.08
Schlitz	917,128	15.27
Siebens	21,428	.36
Standard	1,543	.03
Star Union	23,549	.39
Sterling	23,414	.39
Stroh	11,610	.19
Van Merritt	92,044	1.53
Warsaw	40,244	.67
Wausau	2,098	.03
Weber-Waukesha	420	.01
Wiedemann	14,159	.24
Non-brewery importers	19,413	.32
Foreign	12,646	.21
TOTAL	6,005,086	99.96

* Figure is under .005%.
** Case Reports Show:
Pabst: 284,766
Blatz: 192,695

SALES OF BEER IN ILLINOIS

1960

wery	Barrels	%	RANK	Brewery	Barrels	%	RANK
.-Busch	1,186,454	19.35	1	Metropolis	3,027	.05	35
antic	106,486	1.74	12	Metz	108	*	53
lantine	23,435	.38	19	Miller	308,750	5.04	8
:	8,190	.13	30	Mineral Springs	89	*	54
aye	1,455	.02	40	Minneapolis	12,483	.20	25
ger	47	*	55	National	1,836	.03	38
dian Ace	194,725	3.18	11	Oertel	46	*	56
ling	241,277	3.94	9	Pabst-Blatz**	468,074	7.63	5
llivre	138	*	52	Pfeiffer	4,576	.07	32
e.-Sandusky	541	.01	49	Pilsen	56,578	.92	14
s	19	*	57	Potosi	9,398	.15	29
erland	1,089	.02	43	Rahr-Green Bay	1,385	.02	41
ry's	437,858	7.14	6	Reisch	14,121	.23	22
que	975	.02	45	Rhinelander	1,074	.02	44
s City	4,517	.07	33	Ruppert	2,807	.05	37
taff	595,691	9.72	3	Schlitz	943,060	15.38	2
Head	44,224	.72	15	Siebens	20,069	.33	21
gerald	143	*	51	Standard	567	.01	47
elman	13,073	.21	24	Star Union	26,416	.43	17
k	3,002	.05	36	Sterling	24,335	.40	18
el	9,875	.16	28	Stroh	12,243	.20	26
z	4,347	.07	34	Valley Forge	4,672	.08	31
's	544,774	8.89	4	Van Merritt	87,973	1.43	13
, Peter	365,394	5.96	7	Warsaw	36,020	.59	16
eman	217,339	3.54	10	Wausau	1,506	.02	39
r	13,596	.22	23	West Bend	1,354	.02	42
pohl	564	.01	48	Wiedemann	11,510	.19	27
-Milwaukee	22,222	.36	20	Non-brewery			
rnational	937	.02	46	importers	20,381	.33	
r	218	*	50	Foreign	13,890	.23	
				TOTAL	6,130,953	99.98	

igure is under .005%.
se Reports Show:
Pabst: 259,749
Blatz: 193,534

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-90

SALES OF BEER IN ILLINOIS

1961

Brand	Barrels	%	RANK	Brand	Barrels	%
Anheuser-Busch	1,168,522	19.41	1	Minneapolis	11,348	.19
Atlantic	109,235	1.81	12	National	1,396	.02
Ballantine	21,128	.35	19	Oertel	40	*
Best	6,905	.11	28	Oshkosh	330	.01
Buckeye	1,492	.02	36	Pabst-Blatz**	453,283	7.53
Canadian Ace	189,926	3.16	11	Pearl	2,737	.05
Carling	229,216	3.81	9	Pfeiffer	17,806	.30
Centlivre	40	*	49	Pilsen	51,087	.85
Cleve.-Sandusky	350	.01	46	Potosi	12,353	.21
Coors	37	*	51	Queen City	1,282	.02
Drewry's	444,843	7.39	6	Rahr-Green Bay	1,056	.02
Dubuque	951	.02	41	Reisch	13,681	.23
Falls City	4,332	.07	31	Rhinelander	2.083	.03
Falstaff	581,736	9.66	3	Ruppert	949	.02
Fischbach	173	*	48	Schlitz	881,992	14.65
Fox Head	34,426	.57	16	Sieben	19,941	.33
Gluck	2,580	.04	34	Star Union	25,390	.42
Goebel	6,275	.10	29	Stroh	13,421	.22
Hamm's	530,796	8.82	4	Valley Forge	4,445	.07
Hand, Peter	397,541	6.60	7	Van Merritt	88,860	1.48
Heileman	212,117	3.52	10	Warsaw	35,454	.59
Huber	16,130	.27	22	Wausau	544	.01
Hudepohl	634	.01	44	West Bend	998	.02
Ind. Milwaukee	24,265	.40	18	Wiedeman	7,602	.13
International	766	.01	43	Non-brewery		
Metropolis	3,876	.06	32	importers	22,436	.37
Miller	343,950	5.71	8	Foreign	16,597	.28
Mineral Springs	4	*	52			
				TOTAL	6,019,357	99.98

* Less than .005%
** Pabst Records Show:
Pabst 255,440
Blatz 196,860

SALES OF BEER IN THREE-STATE AREA
Wisconsin, Illinois, Michigan

1957

ery	Barrels	%	RANK	Brewery	Barrels	%	RANK
osia	49,489	.35	32	Hand, Peter	368,691	2.59	13
-Busch	1,123,926	7.90	3	Heileman	324,403	2.28	14
ntic	95,950	.67	24	Huber	25,574	.18	49
antine	35,360	.25	42	Hudepohl	876	.01	96
in	8,170	.06	71	Ind.-Milwaukee	102,553	.72	22
	43,307	.30	34	International	190,189	1.34	15
	831,527	5.84	6	Jung	5,915	.04	74
dian	83,005	.58	26	Keeley	266	*	101
n	84,260	.59	25	Kingsbury	157,670	1.11	17
Peter	696	*	97	Knapstein	4,942	.03	77
ye	20,320	.14	54	Latrobe	929	.01	95
ardt(Burger)	8,257	.06	70	Leinenkugel	70,643	.50	28
lian Ace	143,583	1.01	18	Leisy	1,159	.01	93
ng	586,241	4.12	9	Marathon	9,620	.07	66
livre	3,380	.02	81	Marshfield	8,422	.06	69
.-Sandusky	18,925	.13	55	Men.-Marinette	24,086	.17	50
y's	1,029,706	7.24	4	Metropolis	4,174	.03	79
ue	1,217	.01	92	Miller	581,721	4.09	10
h	1,046	.01	94	Mineral Springs	6,339	.04	73
	117,862	.83	19	Minneapolis	36,198	.25	39
ger	11,515	.08	62	Monarch	49,391	.35	33
rg	11,928	.08	60	National	188,521	1.32	16
City	2,872	.02	83	Northern	10,502	.07	63
aff	534,773	3.76	12	Oconto	53,840	.38	31
bach	35,608	.25	41	Oshkosh	54,145	.38	30
r	6,403	.04	72	Pabst	779,234	5.48	7
erald	242	*	102	Peoples (Duluth)	49	*	103
enmuth	328	*	100	Peoples(Oshkosh)	33,637	.24	44
Pitt	632	*	98	Pfeiffer-			
ain	2,521	.02	85	(Schmidt)	547,810	3.85	11
ead	117,312	.82	20	Pilsen	71,390	.50	27
lman	97,735	.69	23	Pilsener	1,405	.01	89
	9,874	.07	65	Potosi	26,712	.19	47
	5,466	.04	75	Prima	3,103	.02	82
l	639,164	4.49	8	Queen City	4,856	.03	78
	3,593	.03	80	Rahr-Green Bay	36,624	.26	38
dieckBro.	105,798	.74	21	Red Top	2,492	.02	86
	873,899	6.14	5	Reisch	18,541	.13	56

gure is under .005%.

(continued)

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-92

SALES OF BEER IN THREE-STATE AREA
(continued)

1957

Brewery	Barrels	%	RANK
Renner	1,249	.01	90
Rhinelander	22,046	.15	51
Rice Lake	16,664	.12	58
Ruppert	1,666	.01	88
Scheidt	5,351	.04	76
Schlitz	1,478,816	10.39	2
Sebewaing	38,140	.27	36
Sieben	21,108	.15	53
Sioux City	466	*	99
Standard	11,913	.08	61
Star Peerless	8,930	.06	68
Star Union	30,801	.22	46
Sterling	18,168	.13	57
Stevens Point	39,237	.28	35
Storck	10,396	.07	64
Van Merritt	13	*	104
Stroh	1,629,944	11.
Terre Haute	25,852	.
Two Rivers	12,[illegible]3	.
Walter(Appleton)	36,031	.
Walter(EauClaire)	31,069	.
Warsaw	37,724	.
Wausau	21,712	.
Weber, G.	2,[illegible]85	.
Weber-Waukesha	60,237	.
West Bend	34,452	.
Wiedemann	2,728	.
Wisconsin Brewing	1,249	.
Zeman	9,177	.
Non-brewery importers	68,480	.
TOTAL	14,230,609	99.

* Figure is under .005%.

SALES OF BEER IN THREE-STATE AREA
Wisconsin, Illinois, Michigan

1958

ewery	Barrels	%	RANK	Brewery	Barrels	%	RANK
brosia	48,312	.34	31	Heileman	315,236	2.25	14
h.-Busch	1,254,346	8.94	2	Huber	27,078	.19	47
lantic	127,212	.91	19	Hudepohl	756	.01	92
llantine	37,974	.27	36	Ind.-Milwaukee	122,860	.88	20
rlin	7,472	.05	67	International	174,168	1.24	17
st	31,370	.22	45	Jung	1,603	.01	88
tz	1,080,954	7.70	4	Kingsbury	177,196	1.26	16
hemian (V.M.)	94,374	.67	25	Knapstein	7,210	.05	68
ch	100,116	.71	23	Latrobe	1,223	.01	90
, Peter	592	*	93	Leinenkugel	72,310	.52	27
keye	33,058	.24	41	Leisy	4,311	.03	78
richardt(Burger)	12,660	.09	59	Mankato	26	*	98
adian Ace	187,335	1.33	15	Marathon	10,406	.07	64
rling	673,185	4.80	8	Marshfield	8,011	.06	65
ntlivre	4,245	.03	79	Men.-Marinette	19,150	.14	55
ve.-Sandusky	20,370	.15	53	Metropolis	4,889	.03	76
rs	11	*	99	Miller	573,647	4.09	10
wry's	1,029,870	7.34	5	Mineral Springs	5,334	.04	75
uque	1,345	.01	89	Minneapolis	47,334	.34	32
uth	1,032	.01	91	Monarch	31,071	.22	46
B	100,275	.71	22	National	156,502	1.12	18
finger	10,902	.08	62	Northern	10,709	.08	63
lberg	6,047	.04	72	Oconto	59,103	.42	28
S	140	*	97	Oertel	160	*	96
ls City	4,01_	.03	80	Oshkosh	56,975	.41	29
staff	605,557	4.31	9	Pabst	698,508	4.98	7
erbach	37,957	.27	37	Peoples(Oshkosh)	33,422	.24	40
ger	6,456	.05	70	Pfeiffer-(Schmidt)	487,642	3.47	12
ntain	2,519	.02	84	Pilsen	72,311	.52	26
Head	99,997	.71	24	Pilsener	7,743	.06	66
telman	118,717	.85	21	Pittsburgh	3,791	.03	82
er	12,418	.09	60	Potosi	26,887	.19	48
ek	5,465	.04	74	Prima	1,634	.01	87
bel	496,600	3.54	11	Queen City	6,300	.04	71
tz	4,389	.03	77	Rahr-Green Bay	39,084	.28	35
n's	905,909	6.45	6	Reisch	17,544	.12	57
d, Peter	371,441	2.65	13				

Figure is under .005%.

(continued)

[fol. 266]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-94

SALES OF BEER IN THREE-STATE AREA
(continued)

1958

Brewery	Barrels	%	RANK	Brewery	Barrels	
Renner	3,149	.02	83	Stroh	1,187,496	8.
Rhinelander	25,222	.18	49	Two Rivers	11,449	.
Rice Lake	16,717	.12	58	Walter(Appleton)	37,738	.
Ruppert	2,328	.02	85	Walter(EauClaire)	31,660	.
Scheidt	5,679	.04	73	Warsaw	39,958	.
Schlitz	1,477,738	10.53	1	Wausau	19,192	.
Sebewaing	41,926	.30	33	Weber, O.	2,162	.
Sieben	20,922	.15	51	Weber-Waukesha	49,533	.
Sioux City	303	*	95	West Bend	32,441	.
Standard	20,567	.15	52	Wiedemann	19,061	.
Star Union	31,513	.22	44	Wisconsin Brewing	479	
Sterling	23,536	.17	50	Zeman	3,955	.
Stevens Point	37,573	.27	39	Non-brewery importers	69,557	.
Storck	6,878	.05	69			
				TOTAL	14,035,503	100

* Figure is under .005%.

SALES OF BEER IN THREE-STATE AREA
Wisconsin, Illinois, Michigan

1959

...ery	Barrels	%	RANK
...-Busch	1,437,833	9.95	3
...ntic	156,554	1.08	18
...lantine	37,062	.26	35
...rian	226	*	86
...lin	9,786	.07	60
...	26,249	.18	42
...uian (V.M.)	120,322	.83	22
...h	99,665	.69	23
... Peter	747	.01	81
...aye	24,849	.17	43
...hardt(Burger)	10,453	.07	56
...dian Ace	203,485	1.41	14
...ling	729,340	5.05	7
...ilvre	2,899	.02	72
...e.-Sandusky	9,548	.07	61
...s	19	*	93
...ry's	1,064,947	7.38	5
...gue	1,296	.01	78
...ch	1,528	.01	77
...s	159,247	1.10	17
...ger	10,049	.07	57
...S	111	*	90
...a City	4,351	.03	67
...taff	636,551	4.41	8
...rbach	39,485	.27	32
...er	6,676	.05	63
...tain	2,281	.02	75
...Head	129,889	.90	20
...elman	129,290	.90	21
...	10,546	.07	55
...	5,399	.04	65
...el	449,881	3.12	11
...	4,306	.03	69
...ter	218	*	87
...'s	914,363	6.33	6
..., Peter	377,684	2.62	12
...man	327,450	2.27	13

Brewery	Barrels	%	RANK
Huber	26,770	.19	41
Hudepohl	679	*	82
Ind.-Milwaukee	98,542	.68	24
International	137,584	.95	19
Kingsbury	170,084	1.18	16
Knapstein	107	*	91
Krueger	40	*	92
Latrobe	1,169	.01	79
Leinenkugel	73,763	.51	25
Leisy	253	*	85
Marathon	9,930	.07	59
Marshfield	7,852	.05	62
Men.-Marinette	10,562	.07	54
Metropolis	5,627	.04	64
Metz	513	*	83
Miller	542,598	3.76	9
Mineral Springs	4,341	.03	68
Minneapolis	44,803	.31	29
National	181,783	1.26	15
Northern	12,939	.09	53
Oconto	62,817	.44	27
Oertel	130	*	88
Oshkosh	59,281	.41	28
Pabst-Blatz**	1,944,329	13.47	1
Peoples	33,697	.23	37
Pfeiffer-(Schmidt)	481,117	3.33	10
Pilsen	69,905	.48	26
Pilsener	2,669	.02	73
Pittsburgh	815	.01	80
Potosi	27,507	.19	40
Queen City	3,991	.03	70
Rahr-Green Bay	43,825	.30	30
Reisch	15,124	.10	49
Renner	3,257	.02	71
Rhinelander	22,357	.15	46
Rice Lake	15,441	.11	48

(continued)

...gure is under .005%.
...se Reports Show:
...abst: 720,405
...Blatz: 1,214,863

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-96

SALES OF BEER IN THREE-STATE AREA
(continued)

1959

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Ruppert	2,527	.02	74	Walter(Appleton)	39,104	.27
Scheidt	4,971	.03	66	Walter(EauClaire)	32,144	.22
Schlitz	1,491,375	10.33	2	Warsaw	40,244	.28
Sebewaing	37,499	.26	34	Wausau	14,254	.10
Sieben	21,428	.15	47	Weber, G.	2,015	.01
Standard	13,569	.09	52	Weber-Waukesha	420	*
Star Union	23,945	.17	44	West Bend	33,034	.23
Sterling	23,810	.16	45	Wiedemann	14,159	.10
Stevens Point	36,593	.25	36	Wisconsin Brewing	116	*
Stroh	1,268,852	8.79	4	Non-brewery		
Two Rivers	10,048	.07	58	importers	67,905	.47
				TOTAL	14,438,808	99.98

* Figure is under .005%.

SALES OF BEER IN THREE-STATE AREA
Wisconsin, Illinois, Michigan

1960

ery	Barrels	%	RANK	Brewery	Barrels	%	RANK
-Busch	1,576,508	10.79	2	Huber	28,799	.20	41
ntic	167,103	1.14	17	Hudepohl	564	*	81
antine	29,857	.20	39	Independent-			
in	9,433	.06	54	Milwaukee	92,107	.63	23
	20,317	.14	45	International	115,230	.79	20
ian (V.M.)	115,625	.79	19	Latrobe	1,046	.01	79
h	99,850	.68	22	Leinenkugel	72,522	.50	24
Peter	621	*	80	Maier	218	*	83
ye	43,927	.30	29	Marathon	9,585	.07	52
ardt(Burger)	7,257	.05	61	Marshfield	7,946	.05	59
ian Ace	205,358	1.41	15	Men.-Marinette	8,489	.06	57
ng	799,929	5.48	7	Metropolis	8,362	.06	58
livre	2,373	.02	72	Metz	108	*	86
ry Brewing	115	*	85	Miller	527,445	3.61	9
.-Sandusky	5,708	.04	63	Mineral Springs	3,784	.03	68
	19	*	88	Minneapolis	44,148	.30	28
y's	1,044,684	7.15	5	National	187,581	1.28	16
ue	1,323	.01	77	Northern	13,370	.09	49
h	1,550	.01	75	Oconto	57,086	.39	26
	324,448	2.22	13	Oertel	46	*	87
ger	9,542	.07	53	Oshkosh	54,392	.37	27
City	4,517	.03	66	Pabst-Blatz**	2,081,364	14.25	1
aff	641,745	4.39	8	Peoples	33,000	.23	36
bach	37,952	.26	32	Pfeiffer-			
r	7,169	.05	62	(Schmidt)	437,017	2.99	11
erald	143	*	84	Pilsen	67,048	.46	25
ain	1,901	.01	73	Pilsener	3,336	.02	69
ead	107,995	.74	21	Pittsburgh	1,088	.01	78
	219	*	82	Potosi	29,238	.20	40
man	130,835	.90	18	Queen City	2,949	.02	70
	9,150	.06	55	Rahr-Green Bay	42,621	.29	30
	5,431	.04	64	Reisch	14,121	.10	48
l	324,057	2.22	14	Renner	1,736	.01	74
	4,347	.03	67	Rhinelander	20,493	.14	44
	965,402	6.61	6	Rice Lake	14,714	.10	47
Peter	391,163	2.68	12	Ruppert	2,807	.02	71
an	491,127	3.36	10	Schlitz	1,454,933	9.96	3

gure is under .005%.
se Reports Show:
bst: 752,861
atz: 1,326,472

(continued)

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-98

SALES OF BEER IN THREE-STATE AREA
(continued)

1960

Brewery	Barrels	%	RANK	Brewery	Barrels	%
Sebewaing	32,451	.22	37	Walter(Appelton)	39,529	.2
Sieben	20,069	.14	46	Walter(EauClaire)	34,541	.2
Standard	7,538	.05	60	Warsaw	36,020	.2
Star Union	26,700	.18	42	Wausau	12,093	.0
Sterling	24,517	.17	43	Weber, G.	1,507	.0
Stevens Point	35,901	.25	34	West Bend	32,075	.2
Stroh	1,183,615	8.10	4	Wiedemann	11,510	.0
Two Rivers	9,073	.06	56	Non-brewery		
Valley Forge	4,672	.03	65	importers	69,617	.4
				TOTAL	14,609,421	100.

SALES OF BEER IN THREE-STATE AREA
Wisconsin, Illinois, Michigan

1961

ewery	Barrels	%	RANK	Brewery	Barrels	%	RANK
.-Busch	1,554,375	10.67	2	Huber	33,083	.23	35
antic	207,070	1.42	15	Hudepohl	634	*	76
lantine	26,846	.18	40	Independent-			
lin	9,757	.07	49	Milwaukee	86,155	.59	22
t	13,817	.09	45	International	101,952	.70	20
ch	99,932	.69	21	Latrobe	843	.01	74
	485	*	77	Leinenkugel	71,475	.49	23
keye	42,471	.29	26	Marathon	9,301	.06	51
ger	8,171	.06	54	Marshfield	7,773	.05	55
adian Ace	200,094	1.37	16	Men-Marinette	153	*	81
ling	830,710	5.70	7	Metropolis	8,861	.06	53
tlivre	40	*	84	Miller	695,694	4.78	8
ve.Sandusky	5,373	.04	58	Mineral Spring	777	.01	75
re	37	*	86	Minneapolis	47,352	.33	26
wry's	1,039,605	7.14	5	National	188,280	1.29	17
uque	1,253	.01	72	Northern	11,947	.08	47
uth	1,511	.01	71	Oconto	44,981	.31	27
B	304,013	2.09	13	Oertel	40	*	85
inger	9,912	.07	48	Old Crown	1,877	.01	70
l City	4,332	.03	62	Oshkosh	51,529	.35	25
staff	687,569	4.72	9	Pabst-Blatz**	2,195,226	15.07	1
erback	34,414	.24	34	Pearl	2,737	.02	66
back	173	*	80	Peoples	31,580	.22	37
ger	7,712	.05	56	Pfeiffer	399,789	2.74	12
ntain	2,557	.02	67	Pilsen	64,489	44	24
Head	104,097	.71	19	Pilsener	2,329	.02	69
mann &				Pittsburgh	275	*	78
midt	144	*	82	Potosi	32,622	.22	36
r	9,064	.06	52	Queen City	2,468	.02	68
k	4,622	.03	59	Rahr Green Bay	34,537	.24	33
el	243,270	1.67	14	Reisch	13,681	.09	46
	940,583	6.46	6	Renner	4,096	.03	63
,Peter	428,764	2.94	11	Rhinelander	21,419	.15	42
man	484,665	3.33	10	Rice Lake	13,887	.10	44
ell	3,136	.02	65	Ruppert	949	.01	73
				Schlitz	1,469,404	10.09	3

Less than .005%
Pabst Records show:
bst 775,269
atz 1,418,775

(Continued

[fol. 272]

IN THE UNITED STATES DISTRICT COURT
Joint Exhibit No. JX-100

SALES OF BEER IN THREE-STATE AREA
(Continued)

1961

Brewery	Barrels	%	RANK	Brewery	Barrels
Sebewaing	29,494	.20	38	VanMerritt	117,278
Sieben	19,941	.14	43	Walter(Appelton)	38,469
Standard	4,339	.03	61	Walter(Eau Claire)	34,976
Star Union	25,676	.18	41	Warsaw	35,454
Sterling	104	*	83	Wausau	3,736
Stevens Point	35,276	.24	31	Weber	202
Stroh	1,127,706	7.74	4	West Bend	28,617
Two Rivers	9,711	.07	50	Wiedeman	7,602
Valley Forge	4,445	.03	60	N.B.I.	76,609
				TOTAL --	14,562,604

[fol. 273] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-105

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

Served in Court 3-7-60

Filed in Sealed Envelope 3-7-60

Confidential—per Court Order entered 3-8-60.

UNITED STATES OF AMERICA, Plaintiff,

v.

PABST BREWING COMPANY ET. AL., Defendants.

ANSWERS TO INTERROGATORIES SERVED ON DEFENDANT, PABST BREWING COMPANY, NOVEMBER 13, 1959

STATE OF ILLINOIS,
County of Cook, ss:

JOSEPH R. GRAY being duly sworn on oath, deposes and says as follows:

1. He is presently a Vice-President and Secretary of Pabst Brewing Company, a Delaware corporation, one of the defendants in the above entitled cause. He is a duly licensed attorney at law having been first admitted to the Bar of the State of Illinois in 1933 and that he has been employed by Pabst Brewing Company in its legal department since 1951. By reason of his position and his experience with the affairs of the company, he is generally familiar with all of its operations and proceedings.

(Throughout these answers said Pabst Brewing Company is sometimes referred to as "Pabst" and the affiant Joseph R. Gray is sometimes referred to as "affiant.")

2. He has received a copy of and read the Interrogatories numbered 1 through 30 served on Pabst by the plaintiff on November 13, 1959 and of the Objections to Interrogatories numbered 10, 11, 12 (subparagraphs (a) and (c)), 13, 14, 15, 16, 18, 19, 26, 27, 28 and 29 heretofore filed in behalf of [fol. 274] Pabst by its attorneys with this court on January 21, 1960.

3. Attached hereto are the answers of Pabst to the Interrogatories, to which Objections have not been made, being those Interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 12 (subparagraph (b)), 13 as it applies to the foregoing subparagraph, 17, 20, 21, 22, 23, 24, 25 and 30.

4. Certain of the Interrogatories request that information be furnished for time periods commencing in the past and ending "to date" and furnishing such information, particularly tabulations of sales or production, necessitated fixing a firm date as of which said answers could speak. All of the following answers have been stated on the basis of information available to Pabst on or before October 31, 1959 and not thereafter.

5. He has read the answers to the Interrogatories which are attached hereto. The information furnished in such answers has been obtained by the affiant from investigations by him of the facts therein stated or from investigations by persons whom he believed reliable and capable of ascertaining such facts. Based upon said investigations and to the best of affiant's information and belief, the matters stated in said answers are true.

6. The answers to each and all of the Interrogatories are made without thereby or in any wise waiving or intending to waive, but on the contrary intending to reserve and reserving (1) all questions as to competency, privilege, relevancy, materiality and admissibility as evidence for any purpose in any subsequent step or proceeding in this action of any of the answers, in whole or in part, or the subject matter thereof; (2) the right to object to the use of any of said answers, in whole or in part, or the subject matter [fol. 275] covered thereby, in any subsequent step or proceeding in this action, on any or all of the foregoing grounds, or any proper grounds whether or not enumerated above; (3) the right to object on any and all grounds, at any time, to other interrogatories or other discovery procedure in-

volving or related to the subject matter of the interrogatories here answered; and (4) the right, at any time, upon proper showing, to revise, correct or clarify any of said answers.

Joseph R. Gray.

Subscribed and Sworn to before me this 4th day of March, 1960.

Mary E. Dolson, Notary Public.

My Commission Expires June 7, 1960.

[fol. 276] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-106

Answer to Interrogatory 1

U.S. v. Pabst Brewing Co., 59 C 215 (E.D. Wis.)
Interrogatories served on Pabst Brewing Co., November 13, 1959

"1. List the names of all companies whose capital stock was owned in whole or in part by the Pabst Brewing Company at any time during the period from January 1, 1945 to date and state with respect to each:

(a) The State and date of incorporation and, if presently not in existence, the date of dissolution;

(b) The number of shares of capital stock outstanding and the number of such shares owned by Pabst during the above period;

(c) A general description of its business or functions."

To literally answer this Interrogatory, Pabst would be required to list the names of each company in which it owned a single share of stock from January 1, 1945 to October 31, 1959 including companies whose shares may have been purchased by Pabst from time to time as short term investments to hold in place of cash. The interrogatory has been construed to require information only as to those companies which would normally be considered affiliates or subsidiaries of Pabst. Based on such construction, the following pages list the information requested for each such company:

[fol. 277]

Pabst Brewing Company Subsidiaries
(Since January 1, 1945)

	Chartered		Date of Merger or Dissolution	Outstanding Capital Stock	Shares Owned by Pabst	Business or Function
	State	Date				
Pabst Sales Company	Delaware	12-10-27	12-31-53	3,000	3,000	Wholesaler of malt beverages
Hastings Grain Company	Illinois	4-17-46	12- 8-51	2,000	2,000	Grain Elevator
Macon Grain Company Name changed to Thornton Grain Company	Illinois	3-16-46	12-24-51	1,500	1,500	Grain Elevator
Canada Cream of Malt Ltd.	Canada	8-11-25	7-31-50	1,200	1,200	Wholesaler of malt products
Los Angeles Brewing Company	California	5- 5-48	10-30-53	30,000	30,000	Brewer
Bay Sales Company	California	12-19-49	12-24-51	1,500	1,500	Wholesaler of malt beverages
Pabst Sales Co. Name changed to Blatz Brewing Company	Delaware	12-31-53	2-27-59	10	10	Inactive to 1958 Brewer, 1958—2-27-59
Biscayne Distributors, Inc.	Florida	10- 1-52		250	250	Wholesaler of malt beverages
Blatz Brewing Co.	Delaware	2- 7-59		10	10	Inactive
Blatz Products Company	Wisconsin	9-30-19		50	50	Inactive
Hoffman Beverage Company	New Jersey	1911		165,495	165,495	Manufacture and sale of soft drinks
Pabst Sales Co.	Delaware	2-27-59		10	10	Inactive
[fol. 278]						
Premier Malt Products, Inc.	Delaware	4-10-33		10	10	Wholesaler of malt products
Puritan Malt Extract Company	Illinois	4-19-29		125	125	Inactive
Research and Engineering Corporation	Wisconsin	1-23-48		115	93	Manufacture and sale beer dispensing equipment
Western Trucking Company	Wisconsin	10-20-43		500	500	Inactive

[fol. 279] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-107

Answer to Interrogatory 2(a)

U.S. v. Pabst Brewing Co., 59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Co., November 13, 1959

"2. State for the period from January 1, 1945 to date:

(a) The brand name of each beer which was brewed, distributed, or sold by Pabst within the United States;"

From January 1, 1945 to October 31, 1959 Pabst Brewing Company brewed, distributed or sold, within the United States, the following brand names of beer:

Blue Ribbon Beer
Blue Ribbon Ale
Pabst Bock
Old Tankard Ale
Andeker
Pabst Dark
Tonic
Malta de Pabst
Eastside
Old Tap Lager
Old Mission
Eastside Dark
Eastside Bock
Red, White & Blue
Select
Blue Label
Pabst Picnic Beer
Pabst Draft Beer
Pabst Beer
Casino
Old Maestro
Piccadilly Pale

Export
Luxury (Los Angeles)
Blatz
Blatz Pilsener
Milwaukee Dark
Continental Special
Tempo
Culmbacher
Blatz Bock
Old Heidelberg Castle
Old Heidelberg
Private Stock
Milwaukee
Mr. Milwaukee
Hollywood Malibu
Twin Star

[fol. 280] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-108

Answer to Interrogatory 2(b)

U.S. v. Pabst Brewing Company, 59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Company, November 13, 1959

"2. State for the period from January 1, 1945, to date:

(a) ——

(b) The location and productive capacity, in barrels per year, of each brewery owned or operated by Pabst, with an explanation of how such productive capacity was computed."

During such period Pabst owned or operated the following breweries with the estimated annual productive capacities set forth opposite the location specified:

Milwaukee, Wisconsin
917 W. Juneau Avenue—3,103,464 bbls.
1120 N. Broadway —1,955,400 bbls.

Peoria Heights, Illinois
3431 Prospect Road —1,626,800 bbls.

Newark, New Jersey
400 Grove Street — 361,800 bbls.

Los Angeles, California
1910 N. Main Street — 978,564 bbls.

Explanation of Estimate of Annual Productive Capacity

Productive capacity has been determined by ascertaining the total usable tank capacity available in the brewery's cellars for the fermentation, primary storage, and finishing stages of the brewing processes. Total usable tank capacity was then divided by the number of weeks required for the three stages. This figure is the weekly capacity for the brewery. It in turn was multiplied by 4.33 to ascertain

monthly capacity and that result multiplied by 12 to give yearly capacity. These figures thus assume a steady demand and production schedule over the entire year.

[fol. 281] The capacity of the brewery at 1120 N. Broadway in Milwaukee was determined by using the physical facilities of that plant as they existed prior to the acquisition of Blatz by Pabst. A shortage of tanks available for use in one of the three stages mentioned above limited its theoretical capacity to the amount stated. It is estimated that the present capacity of that brewery would be 1,700,504 bbls.

Neither Pabst nor any other brewer can vouch for the accuracy of capacity estimates which, of necessity, depend on many variables such as demand, scheduling, equipment condition, labor force, and time required for the various stages, any one of which can change and increase or decrease capacity at any time.

[fol. 282] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-109

Answer to Interrogatory 3

U.S. v. Pabst Brewing Company—59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Co., November 13, 1959

> "3. State whether any brewery named in answer to Interrogatory 2(b) is presently in a 'shut-down' status. If so, identify the brewery, state the date it ceased brewing operations, and the reason it was shut down."

The brewery located at 1120 North Broadway, Milwaukee, Wisconsin (hereinafter referred to as the "Blatz Brewery") was, as of October 31, 1959, in a "shut down" status. Packaging operations (herein construed as the final step of "brewing operations" as used in Interrogatory 3) ceased on February 20, 1959. Other aspects of "brewing operations" had ceased prior to that date.

The decision to shift production from the Blatz brewery was carefully considered in the lgiht of many factors, any one of which might constitute a "reason" for the decision. During the summer of 1958 Blatz had been forced to ration beer to its distributors because of the increasing demand for its product and the inability of its production facilities to meet the demand. Management studies in September 1958 indicated that for 1959 Blatz volume should be approximately 2,400,000 bbls, 700,000 bbls. more than the Blatz brewery had produced in 1958; and, that Pabst volume for 1959 should be about 2,400,000 bbls. Total workable capacity for all breweries was estimated at about 7,500,000 bbls. so management faced the problem of which breweries should be used to best meet the production and distribution needs for all brands. Studies were made of costs and other factors which would be involved if all breweries were operated; if the Blatz Brewery were shut down; or, if one of the other breweries were shut down. These studies were presented to the directors who then determined to place the [fol. 283] Blatz brewery in a standby status and to brew

Blatz in the remaining four breweries. Some of the reasons for this decision include:

1. The cost studies indicated that this program would effect the greatest cost savings of all the methods considered.
2. By decentralization of production, the demand for Blatz could be more easily satisfied in the various areas of the country where the breweries were located.
3. Adoption of this program would involve complete consolidation of manufacturing facilities for both Pabst and Blatz, resulting in maximum flexibility, best utilization of experienced personnel, maximum effectiveness in the control of quality, and ability to meet peak summer demands without rationing as had been required for Blatz during 1958.

[fol. 284] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-110

Answer to Interrogatory 4(a)

U.S. v. Pabst Brewing Co., 59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Co., November 13, 1959

"4. List for each of the years 1957, 1958, and 1959 to date, with respect to each brewery owned or operated by Pabst:

(a) The total amount, in barrels, of each brand of beer brewed;"

During the year 1957 the following amounts in barrels by brand were brewed by each of the named breweries:

Milwaukee, Wisconsin—917 West Juneau	
Pabst Blue Ribbon Beer	1,234,307
Andeker Beer	26,167
Old Tankard and Pabst Blue Ribbon Ale	32,637
Los Angeles, California	
Pabst Blue Ribbon Beer	229,625
Eastside Beer	346,686
Old Mission Beer	8,273
Newark, New Jersey	
Pabst Blue Ribbon Beer	348,029
Peoria Heights, Illinois	
Pabst Blue Ribbon Beer	392,585
Eastside Beer (also known as Old Tap Lager)	7,590
Old Tankard and Pabst Blue Ribbon Ale	69,214

During the year 1958 the following amounts in barrels by brand were brewed by each of the named breweries:

Milwaukee, Wisconsin—917 West Juneau

Pabst Blue Ribbon Beer	1,017,326
Andeker Beer	15,800
Old Tankard and Pabst Blue Ribbon Ale	21,188
Blatz Beer	10,496

Los Angeles, California

Pabst Blue Ribbon Beer	231,122
Eastside Beer	363,696
Old Mission Beer	11,381
Blatz Beer	5,963

[fol. 285] Newark, New Jersey

Pabst Blue Ribbon Beer	330,236

Peoria Heights, Illinois

Pabst Blue Ribbon Beer	259,133
Blatz Beer	2,420

Milwaukee, Wisconsin—1120 N. Broadway

Blatz Beer	726,073
Tempo Beer	3,822
Culmbacher Beer	627

During the ten month period ended October 31, 1959, the following amounts in barrels by brand were brewed by each of the named breweries:

Milwaukee, Wisconsin—917 West Juneau

Pabst Blue Ribbon Beer	703,136
Andeker Beer	8,494
Old Tankard and Pabst Blue Ribbon Ale	12,521
Blatz Beer	1,442,366
Tempo Beer	8,979
Continental Beer	583
Culmbacher Beer	2,435

Los Angeles, California	
Pabst Blue Ribbon Beer	178,307
Eastside Beer	248,326
Old Mission Beer	3,759
Blatz Beer	88,488
Newark, New Jersey	
Pabst Blue Ribbon Beer	248,479
Blatz Beer	129,275
Peoria Heights, Illinois	
Pabst Blue Ribbon Beer	369,044
Blatz Beer	233,302
Milwaukee, Wisconsin—1120 N. Broadway	
Blatz Beer	36,979

[fol. 286] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-115

Answer to Interrogatory 10 as amended and modified by Agreed Order entered March 21, 1960.

U.S. v. Pabst Brewing Co., 59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Co., November 13, 1959.

"10. State the prices charged by Pabst since January 1, 1956 for "Pabst Blue Ribbon" brand of beer to distributors on the following units of sale: Returnable bottles, package of 24-12 oz. bottles."

The prices charged to distributors during the period January 1, 1956 to December 31, 1959 for "Pabst Blue Ribbon" brand of beer on packages of 24-12 oz. returnable bottles are as follows. "Price" is defined as F.O.B. brewery price (unless otherwise indicated) on cases of 24-12 oz. loose bottles before any discounts or allowances and does not include bottles deposits or state taxes.

Date Price Effective	Price
Alabama	
1/ 1/56	2.46
Arizona	
1/ 1/56	2.525
Arkansas	
1/ 1/56	2.46
4/ 1/57	2.36

Date Price Effective	Price

[fol. 287]

California

1/ 1/56	2.525
1/ 1/56 [1]	2.79
6/ 4/56	2.575
6/ 4/56 [1]	2.84
1/21/58 [2]	2.575
1/21/58	2.595
5/28/59 [1] [3]	2.695
7/ 1/59 [4]	—
12/ 7/59 [1] [2]	2.66

[1] Delivered price.
[2] Ventura county only.
[3] Part of Los Angeles county only.
[4] All prices effective this date were reduced .045.

Colorado

1/ 1/56	2.46
2/18/57	2.32

Connecticut

1/ 1/56 [1]	2.57
10/ 8/58 [2]	2.43

[1] Shipped from Newark.
[2] Shipped from Milwaukee.

Delaware

1/ 1/56	2.60

District of Columbia

1/ 1/56	2.60
10/15/57	2.10
5/ 1/58	2.60

Date Price Effective		Price
[fol. 288]	**Florida**	
1/ 1/56		2.46
	Georgia	
1/ 1/56		2.46
	Idaho	
1/ 1/56 [1]		2.46
1/ 1/56 [2]		2.525
2/11/57 [1]		2.58
2/11/57 [2]		2.645

[1] Shipped from Milwaukee.
[2] Shipped from Los Angeles.

	Illinois	
1/ 1/56		2.46
	Indiana	
1/ 1/56		2.43
	Iowa	
1/ 1/56		2.32
	Kansas	
1/ 1/56		2.43
	Kentucky	
1/ 1/56		2.43
	Louisiana	
1/ 1/56		2.46
[fol. 289]	**Maine**	
1/ 1/56 [1]		2.60
1/ 1/56 [2]		2.46 [2]

[1] Shipped from Newark.
[2] Shipped from Milwaukee.

Date Price Effective	Price
Maryland	
1/ 1/56 [1]	2.60
1/ 1/56 [2]	2.46
4/18/56 [2] [3]	2.43
8/20/56 [1]	2.72
8/20/56 [2]	2.58
8/20/56 [2] [3]	2.55
8/22/56 [1]	2.60
8/22/56 [2]	2.46
8/22/56 [2] [3]	2.43
4/16/57 [1] [3]	2.57

[1] Shipped from Newark.
[2] Shipped from Milwaukee.
[3] Montgomery county only.

Massachusetts	
1/ 1/56 [1]	2.43
1/ 1/56 [2]	2.57

[1] Shipped from Milwaukee.
[2] Shipped from Newark.

Michigan	
1/ 1/56	2.43

[fol. 290]

Minnesota	
1/ 1/56	2.32
10/ 1/57 [1]	2.42
5/ 1/58 [1]	2.32

[1] Delivery out of Minneapolis warehouse.

Mississippi	
1/ 1/56	2.46
Missouri	
1/ 1/56	2.32
10/ 1/56 [1] [2]	2.085
4/25/57 [2]	2.415

[1] St. Louis only.
[2] F.O.B. St. Louis warehouse.

Date Price Effective	Price
Montana	
1/ 1/56	2.32
Nebraska	
1/ 1/56	2.32
Nevada	
1/ 1/56	2.525
7/ 9/56	2.575
New Hampshire	
1/ 1/56 [1]	2.46
1/ 1/56 [2]	2.60

[1] Shipped from Milwaukee.
[2] Shipped from Newark.

[fol. 291] New Jersey [1]

1/ 1/56	2.69 to 2.75 [2]
2/17/58 [3]	2.71

[1] All prices quoted are delivered prices.
[2] Prices within this range vary by local areas.
[3] Dover only; Long Branch after 2/2/59.

New Mexico

1/ 1/56	2.41

New York

1/ 1/56 [1]	2.60
1/ 1/56 [2] [3]	2.74
1/ 1/56 [2] [4]	2.75
1/ 1/56 [5]	2.46
8/20/56 [2] [3]	2.86
8/20/56 [2] [4]	2.87
2/ 2/59 [2] [6]	2.87

[1] Excludes certain locations near New York City.
[2] Delivered price.
[3] Covers certain locations near New York City.
[4] Poughkeepsie only.
[5] Shipped from Milwaukee; other prices are from Newark.
[6] Center Moriches only.

Date Price Effective	Price
North Carolina	
1/ 1/56	2.46
North Dakota	
1/ 1/56	2.32

[fol. 292]

Ohio	
1/ 1/56	2.28
4/23/56	2.43
Oklahoma	
1/ 1/56 [1]	2.36
6/11/56 [1]	2.46
4/ 1/57 [1]	2.36
8/19/59 [2]	2.43

[1] 3.2 Beer.
[2] Over 3.2 Beer.

Oregon	
1/ 1/56 [1]	2.425
1/ 1/56 [2]	2.46
2/11/57 [1]	2.545
2/11/57 [2]	2.58
4/ 8/57 [2]	2.48

[1] Shipped from Los Angeles.
[2] Shipped from Milwaukee.

Pennsylvania	
1/ 1/56	2.57 [1]
1/ 1/56	2.43 [2]

[1] Shipped from Newark.
[2] Shipped from Milwaukee.

Rhode Island	
1/ 1/56	2.60 [1]
10/ 8/58	2.46 [2]

[1] Shipped from Newark.
[2] Shipped from Milwaukee.

South Carolina	
1/ 1/56	2.46

Date Price Effective	Price
[fol. 293] **South Dakota**	
1/ 1/56	2.32
Tennessee	
1/ 1/56 [1]	2.18
1/ 1/56 [1]	2.46
6/14/57 [1]	2.46

[1] Memphis only.
[2] All but Memphis.

Texas	
1/ 1/56	2.36
Utah	
1/ 1/56	2.525
Vermont	
1/ 1/56 [1]	2.43
10/ 1/56 [2]	2.57

[1] Shipped from Milwaukee.
[2] Shipped from Newark.

Virginia	
1/ 1/56	2.46
Washington	
1/ 1/56 [1]	2.46
4/11/56 [1]	2.36
2/11/57 [1]	2.48
2/17/59 [2]	2.57

[1] Shipped from Milwaukee.
[2] Shipped from Los Angeles.

West Virginia	
1/ 1/56	2.46
[fol. 294] **Wisconsin**	
1/ 1/56	2.31742
Wyoming	
1/ 1/56	2.32

[fol. 295] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-118

Answer to Interrogatory 20(a)

U.S. v Pabst Brewing Co., 59 C 215 (E.D. Wis.)
Interrogatories served on Pabst Brewing Co., November 13, 1959

"20. State for the period from January 1, 1957 to July 30, 1958:

(a) The brand name of each beer which was brewed, distributed, or sold by Blatz within the United States;"

During the period form January 1, 1957 to July 30, 1958, Blatz Brewing Company brewed, distributed or sold, within the United States, the following brand names of beer:

Blatz
Blatz Pilsener
Milwaukee Dark
Continental Special
Tempo
Culmbacher
Blatz Bock
Old Heidelberg Castle
Old Heidelberg
Private Stock
Milwaukee
Mr. Milwaukee
Hollywood Malibu
Twin Star

[fol. 296] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-124

Answer to Interrogatory 26 as amended and modified by Agreed Order entered March 21, 1960.

U.S. v. Pabst Brewing Co., 59 C 215 (E.D. Wis.)

Interrogatories served on Pabst Brewing Co., November 13, 1959.

"26. State the prices charged by Blatz since January 1, 1956 for "Blatz Pilsner" brand of beer to distributors on the following unit of sale: Returnable bottles, package of 24-12 oz. bottles."

The prices charged by Blatz to distributors during the period January 1, 1956 to December 31, 1959 for "Blatz Pilsner" brand of beer on packages of 24-12 oz. returnable bottles are as follows. "Price" is defined as F.O.B. brewery price (unless otherwise indicated) before any discounts or allowances and does not include bottle deposits or state taxes.

Date Price Effective	Price
Alabama	
1/ 1/56	2.06
7/12/56	1.86
Arizona	
1/ 1/56	2.25
7/15/59	1.90
Arkansas	
1/ 1/56	2.11
9/10/58	1.75
3/19/59	1.80

Date Price Effective	Price
[fol. 297] California	
1/ 1/56	2.03
5/28/56	1.85
9/ 5/58	1.76
2/ 9/59 [1]	2.155 to 2.385 [2]
4/15/59 [3]	2.325
7/ 1/59 [4]	—

[1] One delivered price included.
[2] Prices within this range vary by local areas.
[3] Price for delivery to sub-jobber in Los Angeles only.
[4] All prices effective this date reduced .045.

Colorado	
1/ 1/56	2.15
10/22/58	1.90
12/16/58 [1]	1.80

[1] Denver only.

Connecticut	
1/ 1/56	2.26
7/ 1/56	1.79
12/ 1/56	1.93
2/18/59	2.17

Delaware	
1/ 1/56	2.06
7/ 9/56	1.73
2/24/59	1.94

District of Columbia	
1/ 1/56	2.06
7/ 9/56	1.75
2/18/59	1.94

Date Price Effective	Price

[fol. 298] **Florida**

1/ 1/56	2.06
7/31/56 [1]	1.86
7/31/56 [2]	1.66
9/25/58 [3]	1.52
3/24/59 [4]	1.66

[1] Pennsacola only.
[2] Jacksonville, Lakeland, Orlando, Tampa only.
[3] Miami only.
[4] St. Petersburg only.

Georgia

1/ 1/56	2.06
1/24/56 [1]	1.86
5/ 8/56 [2]	1.86
6/ 4/56	1.80
6/ 1/59	1.75

[1] Atlanta only.
[2] Columbus only.

Idaho

1/ 1/56	2.46
10/ 1/56	1.85

[fol. 299] **Illinois**

1/ 1/56	2.16
7/ 9/56 [1]	1.85
7/16/56 [2]	1.96
9/ 5/58 [3]	1.99
3/24/59 [4]	1.90
3/24/59 [5]	1.80

[1] Except Chicago area.
[2] Chicago area only.
[3] Price applied only to new wholesalers in Chicago appointed on or after 9/8/58. Price applied to all wholesalers in Chicago on 4/1/59.
[4] Northern Illinois except Chicago area, and Freeport, Rockford, and Sterling.
[5] Southern Illinois only.

Date Price Effective	Price
Indiana	
1/ 1/56	2.21
5/28/56	1.75
Iowa	
1/ 1/56	2.16
6/12/56 [1]	1.87
6/12/56 [2]	1.75
4/15/59	1.80 to 1.90 [3]

[1] Eastern Iowa only.
[2] Western Iowa only.
[3] Prices within this range vary by local areas.

Kansas	
1/ 1/56 [1]	2.46
10/15/56	1.88
10/10/58	1.82
3/19/59	1.86

[1] All of state but Wichita; Wichita price 1.96.

[fol. 300]

Kentucky	
1/ 1/56	2.46
4/28/58 [1]	1.80
10/20/58 [2]	1.70
10/22/58 [3]	1.75
2/26/59 [4]	1.75
3/19/59 [5]	1.70
4/24/59 [6]	1.75

[1] Henderson only.
[2] Louisville only.
[3] Vanceburg only.
[4] Richmond only.
[5] Maysville only.
[6] Wallins Creek and Hazard only.

Louisiana	
1/ 1/56	2.06
1/10/57 [1]	1.86
12/17/58	1.70

[1] New Orleans only.

Date Price Effective	Price
Maine	
1/ 1/56	2.46
10/ 1/57	1.99
5/14/59 [1]	2.15
11/12/59	2.01

[1] Shipped from Newark; other prices from Milwaukee.

Maryland	
1/ 1/56	2.06
7/ 9/56	1.75
Massachusetts	
1/ 1/56	2.44
1/ 1/57	2.09
10/ 1/58	1.79
2/18/59 [1]	1.98

[1] Shipped from Newark; Boston permitted to continue drawing on Milwaukee at 1.79.

[fol. 301]

Michigan	
1/ 1/56 [1]	2.46
1/ 1/56 [2]	2.33
5/28/56 [1]	1.64 to 1.80 [3]
10/ 8/56 [2]	1.83 to 2.00 [3]
11/12/56 [1]	1.78 to 1.92 [3]
9/24/57 [4]	1.87
12/ 6/57 [5]	1.87
4/15/58 [6]	1.86
5/14/58 [7]	1.92
9/ 2/58 [8]	1.93

[1] Lower Peninsula only.
[2] Upper Peninsula only.
[3] Prices within this range vary by local areas.
[4] Lapeer only.
[5] Owosso only.
[6] Sault Ste. Marie only.
[7] Sturgis only.
[8] Sault Ste. Marie, Munising, and Newberry only.

Date Price Effective	Price
Minnesota	
1/ 1/56	2.12
2/17/58	2.00
4/ 1/58	1.85
9/ 8/58	1.96
Mississippi	
1/ 1/56	2.46
9/18/58	1.75
3/19/59	1.80

[fol. 302]

Missouri	
1/ 1/56	2.12
5/ 7/56	2.06
5/21/56 [1]	1.90
12/ 3/57	1.75
11/ 3/58 [2]	1.86
11/11/58 [1]	1.70
11/11/58 [3]	1.75
12/18/58 [1]	1.75
2/19/59 [4]	1.75

[1] Kansas City only.
[2] All but Kansas City.
[3] St. Joseph only.
[4] Brookfield, Butler, Joplin, and Smithfield.

Montana	
1/ 1/56	2.13
3/24/59	1.90
Nebraska	
1/ 1/56	2.33
7/20/56	1.85
4/ 1/59 [1]	1.87

[1] All except Omaha.

Nevada	
1/ 1/56	2.30
8/ 8/56	1.85
3/ 3/59	2.10

Date Price Effective	Price
[fol. 303] New Hampshire	
1/ 1/56	2.46
2/23/59	2.00
New Jersey	
1/ 1/56 [1]	2.16
6/ 7/56	1.75
10/15/56 [2]	1.85
11/ 5/56 [3]	1.80
7/22/57 [4]	1.75
2/10/59 [5] [6]	2.23
2/16/59 [7]	2.10
3/15/59 [8]	2.10

[1] Except Wallington; Wallington price 1.75.
[2] Except Paulsboro.
[3] Wallington only.
[4] Hammonton only.
[5] Dover, Long Branch, Trenton only.
[6] Effective this date all prices quoted F.O.B. distributor's platform.
[7] Paulsboro and Camden only.
[8] Atlantic City only.

New Mexico	
1/ 1/56	2.14
7/13/56	1.85

Date Price Effective	Price
[fol. 304] New York	
1/ 1/56 [1]	2.46
1/ 1/56 [2]	2.21
6/ 7/56 [2]	1.69
7/20/56 [3]	1.65
8/20/56 [3]	1.75
10/15/56 [2]	1.79
10/15/56 [3]	1.85
12/ 6/56 [4]	1.75
2/10/59 [5]	2.23
2/23/59 [6]	2.23
2/26/59 [7]	1.94 to 2.04 [8]

[1] Eastern New York.
[2] Western New York.
[3] New York City area only.
[4] One account at Brooklyn only.
[5] Center Moriches and Ossining delivered price.
[6] Monticello, Newburgh, and Poughkeepsie delivered price.
[7] Eastern New York except New York City area.
[8] Prices within this range vary by local areas.

North Carolina	
1/ 1/56 [1]	2.46
7/ 9/56	1.86

[1] All except Charlotte; Charlotte price 2.33.

North Dakota	
1/ 1/56	2.15
9/10/58	1.90
Ohio	
1/ 1/56	2.20
5/22/56	1.85
9/ 4/56	1.75
[fol. 305] Oklahoma	
1/ 1/56	2.46
10/24/58	1.76
3/24/59	1.81

Date Price Effective	Price
Oregon	
1/ 1/56	2.46
8/ 2/56	1.85
Pennsylvania	
1/ 1/56	1.45 to 2.14 [1]
6/ 7/56 [2]	1.71
11/ 1/56 [3]	1.55 to 1.81 [1]
3/18/58 [4]	1.75
4/16/59 [5]	1.94
6/16/59 [6]	2.02

[1] Prices within this range vary by local areas.
[2] Western Pennsylvania except West Homestead.
[3] Western Pennsylvania only.
[4] Erie only.
[5] York, Boyertown, and Chambersburg only.
[6] West Chester only.

Rhode Island	
1/ 1/56	2.46
7/23/57	1.93
6/ 1/58	1.79
2/23/59	2.17
South Carolina	
1/ 1/56	2.06
7/ 9/56	1.73

[fol. 306]

South Dakota	
1/ 1/56	2.15
9/ 5/58	1.85

Date Price Effective	Price
Tennessee	
1/ 1/56	2.21
2/17/58 [1]	1.80
8/27/58 [2]	1.75
9/15/58 [3]	1.75
12/ 8/58 [4]	1.75
5/ 1/59	1.75

[1] Athens and Knoxville only.
[2] Nashville only.
[3] Chattanooga only.
[4] Shelbyville only.

Texas	
1/ 1/56	2.11
12/16/58	1.70
Utah	
1/ 1/56	2.46
6/10/59	1.80
Vermont	
1/ 1/56	2.46
2/16/59 [1]	1.84
2/16/59 [2]	2.00

[1] Shipped from Milwaukee.
[2] Shipped from Newark.

Virginia	
1/ 1/56	2.06
7/ 9/56	1.75
Washington	
1/ 1/56	2.46
1/ 6/56	1.85

[fol. 307]

West Virginia	
1/ 1/56	2.21
2/17/58	1.80
9/15/58 [1]	1.75

[1] Southern West Virginia only.

Date Price Effective	Price
Wisconsin	
1/ 1/56	2.32742
Wyoming	
1/ 1/56	2.13
6/ 2/58	1.90

[fol. 308] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-133

United States v. Pabst Brewing Co., 59 C 215 (E. D. Wis.)

Answer to Government Request Numbered 5, Letter from Department of Justice to John T. Chadwell, August 24, 1961

Total Dollar Volume Spent by Pabst Brewing Company for National Advertising and Promotion of Pabst Brand Beer for Each Year From 1955–1960, Separately Listed as to Various Advertising Media

	1955	1956	1957	1958	1959	1960
Television	$2,754,526	$2,922,049	$2,883,201	$1,094,981	$1,707,472	$1,831,6
Radio	298,957	265,205	625,741	866,175	161,177	214,7
Newspaper	855,147	787,779	106,777	53,565	626,122	218,2
Magazine	72,733	612,546	220,720	406,496	54,323	444,7
Outdoor	561,837	512,087	844,096	804,641	345,123	468,9
Art and Mechanical	162,371	288,223	202,731	429,497	288,958	446,8
Promotion	2,555,699	3,062,427	3,757,591	2,653,647	2,309,577	2,099,1
Total	$7,261,270	$8,450,316	$8,640,857	$6,309,002	$5,492,752	$5,724,2

[fol. 309] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-134

Total Dollar Volume Spent by Pabst Brewing Company for Advertising and Promotion of Pabst Brand Beer in the State of Wisconsin for Each Year From 1955 to 1960, Separately Listed as to Various Advertising Media

	1955	1956	1957	1958	1959	1960
Television	$ 80,912	$151,613	$172,381	$150,412	$201,078	$266,160
Radio	11,486	13,067	20,669	10,589	487	6,162
Newspaper	38,752	52,383	14,342	5,800	62,679	12,657
Magazine	1,655	13,199	5,716	9,382		196
Outdoor	79,776	67,063	102,987	103,206	84,114	122,109
Promotion	223,846	260,397	471,829	279,362	299,110	372,188
Total	$436,427	$557,722	$787,924	$558,751	$647,468	$779,472

[fol. 310] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-135

Total Dollar Volume Spent by Pabst Brewing Company for National Advertising and Promotion of Blatz Brand Beer for the Years 1959 and 1960 Separately Listed as to Various Advertising Media

	1959	1960
Television	$1,379,939	$1,926,453
Radio	704,837	564,942
Newspaper	99,083	64,449
Magazine	11,301	19,613
Outdoor	681,159	930,719
Art & Mechanical	184,678	339,250
Promotion	1,124,700	1,267,869
Total	$4,185,697	$5,113,295

[fol. 311] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT NO. GX-136

Total Dollar Volume Spent by Pabst Brewing Company for Advertising and Promotion of Blatz Brand Beer in the State of Wisconsin for the Years 1959 and 1960 Separately Listed as to Various Advertising Media

	1959	1960
Television	$266,152	$ 270,898
Radio	32,003	47,320
Newspaper	13,708	1,450
Outdoor	265,427	268,895
Promotion	409,527	412,457
Total	$986,817	$1,001,020

[fol. 312] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-137

Confidential September 22, 1958

Selection of New Blatz Distributors for Chicago

On August 4, 1958, J. C. Windham called Rocco Bunino and me to his office. We were instructed to immediately analyze the Chicago market with the purpose of placing Blatz and Pabst in the same distributorships. This meant comparing the merits of the Blatz and Pabst distributors and selecting those that could achieve the best sales results for both brands.

This matter was studied and on August 6th a meeting was held to present recommendations. Those attending the meeting were Rocco Bunino, Leo Steil, Harold Boos, Phil Clancy and I. Joe Gray was present for only a very brief time, but he has been advised of all steps taken affecting the change.

At the meeting I distributed a letter of recommendation prepared for Mr. Windham, copy attached.

After a complete discussion a unanimous decision was reached to give Blatz to the Pabst distributors mentioned in the attached letter. A short time later it was decided to give a small amount of additional territory to Christian Brothers and Oak Terrace, both are Blatz distributors at present. The accounts they received were from P-C Distributing Company's territory.

Following this conference, Phil Clancy and I held individual meetings with the Pabst distributors selected. All were interested in acquiring Blatz, at this time no commitments were made nor asked.

A short time later when more detailed information was available, the distributors were asked if they were definitely interested in handling Blatz. Again, all expressed a desire to handle the line and preparation to make the change was set in motion. At the latter meeting, Phil Clancy, Harold Boos and I were present.

As preparation was made to change distributors various problems were encountered. The most important were:

Lack of parallel between the boundaries of Blatz and Pabst distributors. This is best exemplified by the fact that the territory of Beacon, former Blatz distributor, was divided among four Pabst distributors.

The union displayed a great deal of interest in seeing that Phil Castagna of P-C Distributing Company, former Blatz franchise holder, was to be given ample consideration.

It will be necessary to sell Beacon's trucks to Pabst distributors at a price in excess of value in order to help satisfy the obligations of the distributor.

Two meetings were held with Ray Schoessling and other union officials. Forty-nine Blatz union men were involved. It was necessary to find employment for all of them. This was worked out by placing the majority in permanent positions, those considered surplus were placed in [fol. 313] various Pabst distributors' employ on a thirty-day basis. The matter is to be reviewed at the end of thirty days; if sufficient increase in business has not been obtained to warrant their services, the surplus employees will be dismissed.

As stated earlier, the Teamster's Union displayed an exceptional degree of interest in Mr. Castagna. They indicated that difficulty might be encountered unless a satisfactory settlement was worked out for him. During the last two discussions on this subject, I informed the union that an effort had been made to keep Mr. Castagna in the distributing business but he wasn't interested in handling a concentrated territory with 910 licensees. Nothing more could be offered him.

Mr. Verbest informed the owner of Beacon Distributors, Mr. Ahrens, that his contract was to be terminated. He was notified by mail of a termination date of September 15, 1958.

Beacon has seven trucks with an appraised value of $600.00 to $700.00 each. Five of the trucks will probably be sold to Pabst distributors for a total of $12,500.00. It is doubtful that anything can be done to dispose of the remaining trucks at an inflated price.

Mr. Edstrand is obtaining the Beacon inventory by item.

This will be picked up by Pabst distributors. Beacon will be given consideration on the basis of the dock price and freight plus handling costs.

Mr. Edstrand informed Mr. Hutchins of South Park Distributors that their contract was to be cancelled. A written notice set the termination date at September 15, 1958. No inventory remains in this warehouse.

This distributor ran out of Blatz merchandise before the Pabst distributor was able to take over. This territory was served on a temporary basis by the South Park drivers working out of the Blatz Branch.

A truck appraisal is being obtained and an attempt will be made to sell as many as possible of the three South Park trucks.

Mr. Bunino informed Mr. Castagna that his contract was to be terminated on September 15, 1958. Castagna mentioned, during the interview, that he felt that he should receive a settlement. Later he was offered a portion of his original territory, but he decided that unless he could keep his original franchise area or the greater portion of it, he would not handle the line. At present it appears that he will get out of the beer distributing business entirely.

In a meeting with Mr. Castagna in his office yesterday he mentioned that his obligations are in excess of $80,000. Phil Clancy, Harold Boos and I were present at this meeting. The primary points of discussion were on inventory and trucks.

The P-C inventory is to be transferred to Pabst distributors. Castagna is to be given consideration for the dock cost plus freight and handling. The stock will probably be moved next week.

This morning the new Blatz distributors began servicing and selling Blatz for the first time. To our knowledge, [fol. 314] neither Beacon nor PP-C are making any deliveries. It is doubtful that they will attempt to sell any of their inventory for all of their employees have gone to work for the new distributors.

As additional information of consequence becomes known it will be included in a supplement to this report.

Blatz.

[fol. 315] ATTACHMENT TO INTRA-COMPANY MEMO

(For Intra-Company and Division Office Correspondence)

PABST BREWING COMPANY

To: Mr. J. C. Windham Date: August 6, 1958.
From: Mr. J. F. Morley

File Reference:—

It is proposed that the territories of the following Blatz distributors be turned over to Pabst distributors to merchandise and sell Blatz beer:

The Blatz Branch
Beacon
South Park
P. C.

The Pabst distributors recommended to take over Blatz in the subject areas are:

The Pabst Branch
Blue Ribbon Brew
West Lin
Garfield
Kool Rite
Romans
South Side

The Pabst Branch, Garfield and West Lin will sell Blatz throughout their territories, the others named will handle it in limited portions of their territories. This is necessary because there is no parallel between the boundaries of the current Blatz distributors and those of Pabst.

It isn't deemed advisable to cut into the territories of any other Blatz distributors at this time. The recommended changes involve 8,541 accounts and should be running smoothly before additional revisions are made.

The reasons for giving Pabst distributors preference over Blatz are:

Pabst distributors are in much better financial condition than those of Blatz.

Pabst has much better distribution, especially on-premise.

Pabst has many more draft accounts.

Pabst distributor sales force is larger than that of the Blatz distributors.

Some revision in the territories of the Pabst distributors is contemplated and they will be so informed when the Blatz matter is discussed with them. These changes will [fol. 316] not be made in the immediate future. It is necessary that Blatz become firmly established in their present territories before the revision is made. However, it is well to mention to them that at present we are giving them an excellent addition to the Pabst line and may cut down in their overall territory at a future date.

One of the first steps is to discuss with the Pabst distributors acquiring Blatz the possible need for additional sales personnel and equipment.

The matter of cancelling out Blatz distributors is to be discussed with the legal department to avoid the possibility of legal suits.

The change of distributors must be brought to the attention of the union to eliminate demands at the time the change is made that excess driver personnel be kept on the payroll.

The matter of coordinating Blatz and Pabst brewery sales personnel and distributors handling both brands must be specifically pinpointed. The complete records of Pabst distributor sales personnel and equipment is available for your scrutiny.

JFM/mh

[fol. 317] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-140

Mr. G. P. Butler
Mr. J. A. Duffy

October 10, 1957.

1958 Advertising

Replying to your memo of October 8, 1957 in connection with proposed consumer advertising plans for certain markets in the South Central Division, we hereby acknowledge receipt of a letter from Norman, Craig & Kummel, Inc. under date of October 8th, outlining markets of this Division in Areas 3 & 4 scheduled for 24-sheet poster consideration.

Assuming that the Budget allocated for this Division on the basis of the markets indicated is firm, we ask that you include in the firm Budget Shreveport, Louisiana in place of Ocale, Florida which was erroneously included in the South Central Division make-up.

By including Shreveport, the projected Budget as set up will actually be less than indicated.

Very frankly, we are bitterly disappointed in not having greater consumer advertising representation in this Division, and we realize that the Budget dollar can be stretched just so far. We certainly have no recommendation of excluding any market now under consideration because these markets should receive advertising and as a matter of fact should have more consumer assistance than merely 24-sheet posters, which are partial showings.

With apparent curtailment of what little consumer advertising we have in 1957 to an even greater degree in 1958, it can't help but result in decreasing sales in view of present circumstances. We are very conscious also that a reduction of advertising schedules to almost negligible proportions will in turn affect adversely our wholesaler efforts, perhaps shatter confidence and finally encourage a number of wholesalers who are bordering on the verge of giving up Pabst to finalize their thinking. We are currently undergoing experiences of this nature, and with an ever mounting number of shaky markets, it is only reasonable to conclude we will lose more.

Actually partial showing of 24-sheet posters in only 4 markets, or perhaps 5, just won't begin to do the job. Somewhere, somehow, we have to determine which came first—the chicken or the egg. It isn't easy to come up with sales without advertising, and it certainly is a severe penalty to have advertising which should be on an investive basis pro-rated on current sales. The South has suffered by the absence of advertising, and in order for us to try to reverse downward trends, build confidence, stimulate the desire to sell Pabst and, equally important, [fol. 318] create a demand and call, we must have more consideration than at this point has been indicated. For the most part our wholesalers have been more than fair. Realizing the necessity for advertising, and the fact that we have not been in a position to provide it in sufficient quantities of diversified media, they very willingly participated to the extent possible in many different forms and different ways. There is no doubt in my mind that if given an opportunity they would be willing to continue in the same manner if other conditions are impossible.

We realize that our recommendations for various forms of media, which we indicate below, perhaps will not be considered since it is very emphatically stressed that any added consideration must of necessity be reduced from the list of those few already under consideration. We realize, however, that we would not be doing our job, and that we would be unfair both to our Company and to our wholesalers, who have so much confidence in us, if we did not make certain recommendations which we believe to be vitally important to the success of this Division.

We therefore ask that Management investigate the possibilities of totally sponsoring advertising media in the markets listed below and for the specific types as recommended. We have culled the markets of this Division and feel that the barest minimums would include the markets we are listing:

Market	24-Sheet Poster	Radio Spots	Radio Program News or Sports
Alabama			
*Birmingham	x		
Dothan	x		
*Montgomery	x		
Selma	x		
Arkansas			
El Dorado			x
Hot Springs	x		
Little Rock			x
Texarkana		x	
Louisiana			
Baton Rouge		x	
Monroe		x	
New Orleans	x	x	
Shreveport	x	x	

[fol. 319]

Mississippi			
Gulfport	x	x	
Jackson	x	x	
Tennessee			
Johnson City	x		
Chattanooga	x	x	
*Knoxville	x		
*Memphis	x		

(*Indicates consideration being given)

Alabama

We especially recommend 24-Sheet Posters for Alabama inasmuch as the only advertising media legal would be billboards, TV, Radio, newspapers. All forms of P.O.S. are illegal. We recommend billboards because we feel that they would be a constant reminder to the State of Alabama that Pabst is in Alabama, and we believe this to be more economical than radio or TV.

Arkansas

We have made our selections in the State of Arkansas for the media indicated on the basis of market potential and wholesaler cooperation.

Louisiana

You will note all but one of the markets recommended are brand new wholesalers. Each we believe, and we feel your concur, has excellent sales organizations. In our opinion posters should be minimum consideration and radio spots should be included as additional. With the exception of Monroe, we feel that the markets listed have excellent sales potential. On the other hand if we cannot help them advertising-wise there is every reason to believe, as in every market of this Division, that wholesalers will take on new brands to further impair the selling efforts on Pabst.

We do recommend, however, that consideration be given Monroe because of the prestige in which this wholesaler is held, his business background and influence, and the fact that if we lose him it would be very difficult to find replacement. In our opinion however, Monroe does not offer the potential as do the others.

[fol. 320] *Mississippi*

Gulfport and Jackson would be our recommendation for posters and for radio spots spread over the year; that is to say, posters would be in evidence for part of the year, and the remaining portion for spots.

Tennessee

All of the markets listed in Tennessee we feel have excellent potential even though in some instances the potential is not being exploited fully.

In the specific case of Memphis, it has taken on the connotation of a badgering game . . . a wait and see approach. In my opinion premium sales will always be at the mercy of locals here in Memphis, but nevertheless it is a very important hub of this area.

With respect to New Orleans, we have been advised that another VHF television station has gone on the air, affiliated with ABC network. From conversations with the local advertising company and with our wholesaler, as supported by correspondence, we invite your attention to cost data and to the recommendations contained therein which would give us a program at a very nominal cost. We are, therefore, re-submitting the complete file for review and possible consideration for consumer advertising in New Orleans. Please note particularly the letter from Mr. Robert Kottwitz dated October 3, 1957 which refers to the new station, Channel 12, whose rates are so much lower than those of the other TV stations.

In no instance are we interested in, or recommending, outdoor rotaries, spectaculars or semi-specs.

In compliance with your memo we hereto return our Advertising Estimate received from the Advertising Agency.

jad:fm
encs.

[fol. 321] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-141

November 10, 1956.

Mr. W. O. Dillingham
Mr. Michael McCabe

Report Week Ending November 9, 1956

With the introduction of our Old Tankard Ale the thought occurred to me that a tie-in with cheese would be as natural and normal as tieing-in ham with eggs. With this thought in mind I met with Mr. George Moran of the Borden Cheese Co., 350 Madison Ave., New York. We discussed our new product and the possibility of having their personnel *and their distributors* tie-in our Ale with their display. We in turn would include Borden's Cheese when making our own displays. It was agreed that we would notify all concerned.

The Borden Company is just about to start their Fall meetings. Atlantic City at the Hotel Dennis is set for Monday, Nov. 26th to Nov. 28th; Memphis, Tennessee, Hotel Peabody, Dec. 10th to Dec. 12th; Chicago, Edgewater Beach, Dec. 4th to Dec. 6th. At these meetings they intend to show new ideas in displaying and promoting Borden cheese products. It is suggested that we have delivered to each of these Hotels some Ale to be displayed at each of these meetings and it will be definitely tied-in with their planned promotion to all the men at the meeting. In addition to the Ale, if we have any floor bins available and point of sale material they should be delivered with the Ale so that a complete display can be set-up. As Borden's is a big Company and operate on a National basis our message will go to many thousands of people all over the county but like any other promotion, we will get out of it just in proportion to what we put into it. The Borden people realize that we have no distribution on this product as yet, but will work with us as we do get distribution whether it is store by store or chain by chain. The important thing here is that we co-operate on the local level and understand not just the opportunity that this promotion affords but also the

limitations that are brought about because of state and local laws in connection with alcoholic beverages.

Working again with Ray Mylott I concentrated this week in showing him how we can be out of stock in the store and yet have a lot of merchandise in the cellar. We found plenty of stores where the shelves were empty or near empty but the cellar contained plenty of our merchandise. We carried these cases up, priced them, put them on the shelves getting extra rows and better positions when ever possible. We were always sure the merchandise had a price sign as well as the price on the actual package. A late survey shows that we have 78.4 distribution on our cans in New York which compares with Budweiser's 75.3, Miller's 52.9 and Schlitz's 83.1. The locals, of course, will have over 99% with the exception of Knickerbocker who has 94%. The situation is different on our bottle beer and it is my opinion that we [fol. 322] should do something about it especially our non returnable 12oz bottle. This package in my opinion is a "natural" for the home. It is the only package that is suited for the dinner table. Because it is one way, it is free from case marks and can be placed on the table with the finest linen, china or silverware and actually adds to any place setting. You cannot do this with a can and all too often you cannot do it with a 12oz returnable bottle because it is too marked-up. The nearness of Thanksgiving and Christmas suggests we do something on this package quickly. Ray Mylott and I called to see Mr. Rocco Ciccone, Superintendent of the First National Stores. He was very cordial and promised complete cooperation and started by giving us an order in their giant Cross County Park-Way Stores in Yonkers. I have plans to see Mr. O'Hare, Vice President of this Company, the General Superintendent Mr. McCarthy, Superintendent's Mr. Murphy and Mr. O'Connor. We worked the area starting at 235th St. and Broadway where the big Safeway Store is located. I introduced Ray to Tommy O'Rielly. From that point we worked stores in Yonkers, Scarsdale, Mt. Vernon, Fleetwood, Bronxdale and White Plains. We covered large markets and small delicatessen's. We also covered some stores in New Jersey, in the Oranges, Montclair, Verona and that general area.

Because the consumers are demanding that they buy their beer "cold", we paid particular attention to the refrigerated areas in the stores and I impressed upon Mylott that unless he could get the man to do more of this work and keep our product always available in the coolers we will never really get the amount of business we are entitled. The small grocery and delicatessen stores in the vicinity of large apartment buildings are doing a big business on Saturday nights and Sunday afternoons on "cold beer".

The more I see of the 10¢ off promotion the more I believe it will do a big job. I would like to see an area such as Westchester County with its high incomed population, get a saturation job with this promotion. I know it cost money but we are not doing any business there now and if we have faith in the product we are making and know that the American Consumer likes and wants the best, I cannot see how we can help but make this important area a top Pabst market.

Michael McCabe.

cc: Mr. Marshall S. Lachner, Mr. Michael McCabe.

MmcC/pe

[fol. 323] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-142

May 7, 1957

Mr. H. G. Harris
Mr. M. S. Lachner

cc: Mr. R. H. Hehman
Mr. M. E. Atkinson

Now that our advertising program has been set with a new agency, a new campaign, and a new television program on 144 stations, I would urge that you have Mr. Atkinson immediately set up a program for giving this information to our organization as well as Distributors, particularly in the following States:

Wisconsin
Illinois
California
Florida
Metropolitan New York and
New Jersey area

This is one of the most important jobs, in my opinion, that you have to do, and I urge that a program be set up to accomplish this job.

Today I am having a meeting with Mr. Hehman and his people, wherein we will set up a program in which you will have transparencies and advertising material of various kinds that can be used to further stimulate our organization for the all important summer months ahead of us.

MSL:am

P.S. May I have a reply to my letter of April 23rd, in regard to the Count and Recount situation in those states where legal, in order to further stimulate our retail sales, and in order to unload our Distributors' warehouses?—(5121)

[fol. 324] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-144

(For Intra-Company and Division Office Correspondence)

PABST BREWING COMPANY
Chicago, Illinois

Date: May 13, 1957.

To: Mr. H. G. Harris
From: Mr. M. S. Lachner
Subject: Returned 5/71 by R.H.H.

cc: Mr. R. H. Hehman—Please note and return to me.—

Do not discuss with anyone!

In answer to your letter of May 3rd, referring specifically to the situation that exists with the sales organization and in the field, in general I agree with your letter, on certain points however I do not agree.

The last paragraph of your first page refers to certain specific programs put on in Legal states. Obviously this is done in order to improve our situation in any area wherever possible, to take a marketing advantage in every legal state possible. It makes sense to do the best you can, wherever you can. The sales organization felt that this program would be complete in those states where promotions are legal, if an On-Premise coupon could be sold against, and thereby tie up the whole territory.

You know the results where re-working had to be done, and even as recent as the Staff Meeting this morning, it was a question that we even have a 25% distribution on Old Tankard Ale in the On-Premise accounts. I can get very specific and say that the reason that our showing isn't any better is due entirely to work in the field, and once this has been corrected with the proper enthusiasm and morale, other problems will look small by comparison.

Again I must remind you that no one in the Marketing Department, nor in the Sales Department has a monopoly on sales programs or ideas. The biggest problem we have is to get people to set up the proper program that will get results and put it into effect.

The second letter you wrote on May 3rd, referring to a

specific program of action—I agree with all points except Number 5. I wish you and Dick Hehman would set up a meeting at which the three of us will discuss in detail the concept of Brand Managers, since only when you and Dick thoroughly agree on its concept will it properly perform. Never lose sight of the fact that today we have two more brands than we had at this same time last year, namely Andeker and Old Tankard Ale.

Total programming for Blue Ribbon was a strain on some people. Total Programming on two additional brands, then, would create considerable confusion if not handled under the Brand concept.

Prepare your briefs and let's then all have our day in court and once a decision has been made, then all throw our weight in one direction behind that agreement and go forward.

[Copy Illegible.]

MSL:am

[fol. 325] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-145

5056 Newcastle Road,
Memphis 17, Tennessee
March 20, 1957.

Mr. Marshall S. Lachner,
President,
Pabst Brewing Company,
Merchandise Mart,
Chicago 54, Illinois

Dear Mr. Lachner:

Thank you very much for your recent letter extending birthday greetings and requesting any suggestions I might have for the improvement and benefit of the Pabst Brewing Company.

You honor me by this request, and I hope that I can come up with something worthwhile. If some of the suggestions are not feasible, then we have the satisfaction of knowing that, at least, I tried. On the other hand, if something is uncovered that improves the position of the Pabst Brewing Company, then the results themselves will be rewarding.

I do know for a fact that a letter from you to our distributors did bring one worth-while suggestion. As a result of the reply from our little distributor at Church Point, Louisiana, we now have the Pabst 10 oz. can in the State of Louisiana. Our business is improving in Church Point and other Louisiana markets with the 10 oz. can. This leads me to believe that similar worthwhile ideas put into action can put Pabst in the Number One position throughout the country.

I believe the Company needs to start with basically improving relations with distributors. Each and everyone of us should realize the individual distributor, large or small, is the primary customer. The adage of "the customer is always right" should be carried to the point of strain. I do not wish to convey the idea that every whim and fancy of all distributors should be honored, but we should be equipped with the knowledge to intelligently

and truthfully answer all inquiries. If there is a work-stoppage at one of our plants, information should be made available to explain to the distributors just exactly what the labor difficulties are and the consequences rather than relying on general terms as we have in the past.

Another pointed illustration of fact right now has to do with the production and shipment of Old Tankard Ale. Believe me, this is the "hottest" item in the Pabst family today. Since we are rationed on production because of demand exceeding supply. Only a token amount of ale is moving into the South Central Division. Many distributors are getting no ale at all; and, try as we may to explain about supply and demand, a great deal of the [fol. 326] distributors are simply disgruntled that some distributors are getting ale while others are not. It irritates these distributors to order ale and then later on be asked to accept substitute items of beer. What we need to know in order to appease feelings is all the facts behind the current supply and demand and just when ale will be available on an unrationed basis. If the non-receiver has a definite and firm idea just when the ale will be available, he is more easily soothed and, in turn, more cooperative in other dealings.

As you probably know, the strength of Blue Ribbon Ale precluded shipments to the States of Alabama and Mississippi; however, Old Tankard is available to conform with state laws and, being the only true ale, we have the position to exploit this advantage and reap the profits. Consider, for example, that we shipped no ale at all into the State of Alabama during the year 1956, while shipments in January, 1957, amounted to 975 cases; February orders totaled 1,075 cases; March orders amounted to 1,216 cases honored (5,755 cases were originally ordered but reduced account of the ration) and April orders amount to 7,452 cases on a rationed-basis. This total of 10,718 cases, or 778 barrels, being shipped into Alabama during the first four months of 1957 is *plus* business for the Pabst Brewing Company. Not only have we new markets for our ale, but the sale of ale is helping the sale of Pabst beer.

The success story in Mississippi would be equally as interesting; however, the bulk of our Division ale ration is

being concentrated in Alabama at the present time in view of the fact that the Mississippi distributors and distributors in all other districts are receiving other benefits to improve business, such as the Buy-Five-Get-One-Free 8/6 package and the 10¢ Off Snap Caps which are not available to the Alabama distributors.

It would be my recommendation that an advertising-merchandising program be initiated for the Alabama distributors to make customers Old Tankard Ale conscious. Point-of-sale is illegal; but newspaper, radio and/or television as well as roadsign signs should be given fullest consideration.

As far as our general point-of-sale advertising is concerned, it is my impression that the distributors prefer prestige, permanent items and a minimum of cardboard. In my own opinion, the Pabst Platter of about two years ago is the best piece of POS yet produced. A lot of people telephoned or wrote us at the Memphis Office requesting copies for their use at home; and many restaurants right here in Memphis allow no other kind of beer advertising but the Platter to this day. My own idea of a similar piece would be a trivet, which could be made of plastic to stimulate metal, with the inscription "What'll You Have" and the Pabst seal designed in the flat part of the body. I believe this piece would be well displayed in restaurants, taverns, etc., and many people would like to have them for their personal use as wall decorations at home.

[fol. 327] Overall, I think we should impress upon the Pabst distributors that the Pabst Brewing Company is providing a great deal of POS material at no cost to the distributors. Each market should have a definite budget for POS set-up well in advance of operating time; and each distributor concerned should be apprised of exactly how much he has coming with trading certificates. Let us say, for example, that a market is given a budget of $188.00 in a given quarter of a certain year. I propose that this distributor be issued something like the samples below, called "Pabst POS Dough" or something appropriate:

When a POS requisition is made out for this distributor by the District Sales Manager, the total cost of the requisition could be determined and "Pabst POS Dough" should be attached to the requisition. Auditing in the Chicago Office could verify the dollar amount, or perhaps refund due to unavailability of an item, and any change due could be returned to the distributor with an acknowledgment of the order. I think this would not only insure each distributor getting his fair share but would bring home the fact that the items supplied cost money.

In the interest of economy, I believe a good deal of Pabst money could be saved on neon signs. It would be my recommendation that outdoor neons be limited extensively and that some of the money saved from this curtailment be invested in Roadside Signs, which are presently a distributor-purchase item. Supplying and erecting an outside neon sign in our section of the country often amounts to $200.00, which is the equivalent of 34 R-619 Roadside Signs.

I do not have the facts, particularly in regard to competition policy, but it has occurred to me that perhaps a detailed investigation ought to be made regarding indoor neons, determining if it would be more practical and economical, after supplying the signs, for ownership as well as erection and maintenance expenses to pass along as a distributor expense.

[fol. 328] I have one other major suggestion which I think would merit consideration. Many of our distributors with excellent distribution complain that the difficulty in operating today is not getting the packages into the retail outlets but moving the goods out of the retail outlet.

We have a distributor at Montgomery, Alabama, Mr. Harold Basch, Sr., of the Harold Basch Distributing Company, who sells 483 of the 488 licensees in the Montgomery territory, or 98.98 percent distribution. On the other hand, Pabst is outsold in the Montgomery territory by both Budweiser and Schlitz. If you feel like you would be able to devote three or four working days in a market, it would be my suggestion that a visit be made to a market like Montgomery to see for yourself the reasons for our present position. A personal visit would enable you to examine the distributor's organization, distribution from the trucks, sales through retail outlets, competitive activity, advertising, etc. If you like, I should be glad to join you in Montgomery and take down in shorthand your "on-the-spot" observations, and all correlated facts could be recorded and worked on to improve that particular market and, where possible, be adapted to a national scale.

We have reports that the labor contract at the Milwaukee plant will be up for renewal soon, and many distributors are concerned that they will be in the same predicament as the summer of 1953. While I know that it is impossible for anyone to say positively that there will or will not be a strike, The Company should have an emergency plan established in the event of a strike. I wonder, for example, if it would be wise to up production at Peoria and use combination barge and rail transportation to the South. Shipments that ordinarily take one week between Peoria and destination would take six weeks by barge and rail. If it looks like there's trouble ahead by the middle of April, enough beer could be moved by barge to carry distributors through June and July retail sales. Shipments could move order-notify and distributors would not have to pay for the shipments until they reached destination. I have no knowledge of rates and tariffs on such shipments, but I believe Mr. Domrose could quickly determine if this suggestion has any merit if it fits in with production plans.

I have many other ideas, particularly in regard to office forms, reports, etc., but space and time limit me at this writing. From time to time, I pass these along through regular channels but there is still much to be desired in

the improvement of many of our forms.

I believe it would be beneficial to office workers like myself to have the opportunity of a visit through one of the operating breweries as well as to the home office in Chicago to see the end result of our efforts and to more or less personalize ourselves with the Pabst products and other Pabst employees.

With kindest regards and best wishes, I am,

Sincerely yours, W. L. Travis, Jr.

wlt

[fol. 329] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-147

PABST BREWING COMPANY
Merchandise Mart, Chicago 54, Illinois

June 5, 1957.

H. G. Harris
C. F. Greenwood

Attached find copy of a memorandum from Mr. Olds, listing the states wherein we can make payments to our wholesalers on a "count and re-count" basis, or, for whatever other legal promotions we may desire to put into effect. Payments may be made by credit memo.

You will note there are 32 states where the above is legal, 11 illegal and 5 doubtful. In one or two of the doubtful or so-called illegal states, I am sure if we would desire to have a promotion, we could find some legal way to reimburse our distributors for any extra effort or monies expended by them. For example: In the District of Columbia we could lower the price of any item we are selling to our distributor until the amount of our indebtedness is liquidated.

In Texas and Maryland, which are listed as legal states, any allowances made to the distributors must be uniform and must be offered to all distributors within the states.

C. F. Greenwood.

CFG:va

cc: M. S. Lachner, W. M. Schockmel, R. H. Hehman, H. H. Anderson, L. J. Buck, G. P. Butler, R. S. Gregory, J. F. Morley, O. D. Wittenberg, W. W. Heusner, L. L. Moore, R. K. Rogers, A. J. Winograd, C. B. Olds.

[fol. 330] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-148

For Intra-Company and Division Office Correspondence

PABST BREWING COMPANY
Chicago, Illinois

Dated: May 31, 1957.

To: Mr. C. F. Greenwood
From: Mr. Charles B. Olds

Subject:—

You have requested our opinion with respect to a program whereunder our company will make periodic payments to our wholesalers based upon our wholesalers' sales to retailers. You have advised me that these payments will be in the form of a local advertising allowance and that the rate of payment will be uniform among all of our wholesalers.

It is our opinion that the payment of such allowances to our wholesalers in the following states under the foregoing plan is lawful:

Alabama
Arizona
Arkansas
Colorado
Florida
Georgia
Idaho
Illinois
Iowa
Kansas (the allowances may be calculated only with respect to sales and shipments of 3.2% beer)
Louisiana
Maryland
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire (all of our invoices and other records of sale must show or refer to these allowances)
New Jersey
New York (all invoices must contain all of the terms and conditions of sale and should refer to these allowances; supplemental invoices and sales record

New York—Continued
must be prepared referring to the original invoice numbers whenever payments of these allowances to our distributors in New York are made)
North Carolina
North Dakota
Oklahoma
Rhode Island
South Carolina
South Dakota
Tennessee
Texas (the allowances may be calculated only with respect to sales and shipments of beer)
Utah
Virginia
Wisconsin
Wyoming

It is our opinion that the laws and regulations of the following states prohibit our paying allowances to our distributors in such states pursuant to the foregoing plan:

California
Connecticut
Delaware
District of Columbia
Indiana
Maine
Massachusetts
Michigan
Ohio
Pennsylvania
Vermont

[fol. 331] Payment of these allowances to our wholesalers in the following states is of doubtful validity:

Kentucky
New Mexico
Oregon
Washington
West Virginia

CBO:mw

[fol. 332] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-150

For Intra-Company and Division Office Correspondence

PABST BREWING COMPANY
Chicago, Illinois

Date: September 17, 1956.

To: Mr. Marshall S. Lachner
From: Mr. Charles B. Olds

Subject: "Buy 5 Get 1 Free" 6 Can-Pak Promotion

You have requested our opinion with respect to a proposed "Buy 5 Get 1 Free" merchandising plan for selling the Handy 6 Can-Pak cartons of Pabst Blue Ribbon beer. You have indicated that appropriate legends, such as, "Buy 5 Get 1 Free" would be lithographed or printed on the Handy 6 Can-Pak cartons and the individual 12 ounce cans. It is assumed that our company would sell the Handy 6 cartons to our wholesalers at a price 16⅔% less than our regular price and that our wholesalers in turn would sell these cartons of beer to retailers at a like reduction in the regular price and that there would be no rebates given by our company to wholesalers or retailers nor would any rebates be given by our wholesalers to retailers.

It is our opinion that the "Buy 5 Get 1 Free" merchandising plan for selling Handy 6 Can-Pak cartons in accordance with the conditions outlined above would be lawful in the following states:

Arkansas
Florida
Idaho
Illinois
Iowa
Kansas (3.2% beer only)
Louisiana
Maryland
Mississippi
Montana
Nevada
North Dakota
Oklahoma
South Carolina
Tennessee
Wisconsin
Wyoming

7/21/57 New York
2/27/57 Indiana

With respect to the states of Idaho and Tennessee, it should be noted that our wholesalers are required to post prices with the Alcoholic Beverage Control Boards of those states.

It is our opinion that this promotion would not be lawful in the following states:

California
Connecticut
Delaware
Dist. of Columbia
Kansas (Over 3.2% beer)
Kentucky
Maine
Michigan
Minnesota
Nebraska
New Hampshire
New Jersey
Ohio
Pennsylvania
Rhode Island
Texas
Vermont
Virginia
Washington

2/19/57 Colorado
2/14/57 Georgia
2/13/57 West Virginia
10/9/56 Oregon

[fol. 333] It is our opinion that this promotion is of doubtful validity in the following states:

Alabama
Arizona
Massachusetts
Missouri
New Mexico
North Carolina
South Dakota
Utah

Charles B. Olds.

CBO: mw

[fol. 334] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-152

PABST BREWING COMPANY
Merchandise Mart, Chicago 54, Illinois

August 5, 1957.

Mr. H. Einstandig
7520 Washington Blvd.
Indianapolis 20, Indiana

Dear Harry:

Since you and I have worked out many problems, was very pleased when Mr. Lachner asked that I answer your birthday letter.

Just a little late in getting the answer off to you because of a short vacation and out of town trips, made it impossible to get off the answer.

In the first paragraph of your letter you referred to the use of trading stamps. We have had previous discussions about stamps and invariably were faced with two problems: 1. legality 2. time element.

To make a stamp program successful, it should run for long periods of time . . . one year, two years or longer. Due to the continual changes of legality, we are reluctant to break with a long term incentive program. At present we are testing a short term bonus plan in the Chicago market. From this plan we hope to find the answer to incentives for the sales personnel.

Your suggestion for the baseball type cap has been turned over to our Purchasing Department for further consideration. There is no reason why this type of cap could not be included with our uniform catalogue sheets.

Your thoughts on reviewing our present package line makes a lot of sense and a complete resume of your thinking was presented at our recent Packaging Meeting. We, too, agree that we are long on packages. It was rather interesting to note however, that in our Packaging Meeting someone had recommended that we pack PBR in

an 8 can carton. Then we also had your suggestion of a 4 pak.

After considerable discussion, it was the opinion of the [fol. 335] Packaging Committee that the 8 pak did not fit our present plans and therefore was dropped. In reference to your suggestion for a 4 pak, we were faced with one big stumbling block . . . the poor sales we experienced from our 4 pak 16 oz. can. It was the consensus of opinion that the consumer has been trained to purchase the 6 pak unit and that we are kidding ourselves to buck the trend.

Actually your paragraph referring to the fact that we have too many packages was responsible for starting a study to determine just where we stand on paks, and without question, some items will be dropped.

Also, your cap idea may prove successful, so on this basis you are batting 500% which is considerably above what the Ted Williams, Mickey Mantle and Stan Musial bat.

Harry, we are very appreciative of your suggestions and we hope you will keep them coming.

Kindest personal regards,

Pabst Brewing Company, L. L. Moore, Brand Manager.

LLM:jd

cc: M. S. Lachner.

[fol. 336] IN THE UNITED STATES DISTRICT COURT

GOVERMENT EXHIBIT No. GX-153

(For Intra-Company and Division Office Correspondence)

PABST BREWING COMPANY

Date: March 20, 1957.

To: Mr. H. G. Harris
From: Mr. R. S. Gregory

Subject: Proposed Program—Washington, D. C.

Subject:			Washington, D.C.		
Licensees:	753	On Premise	957	Off Premise	Total 1711
Now Selling:	641	"	820	"	" 1461
% Distribution:	85%	"	86%	"	" 85+%
Retail Cases Sold 1956—175,429			Retail Draft Sold 1956—9525 ½'s		
1955—189,068			1955—9932 "		
Retail Case Decrease—7%			Retail Draft Decrease—.05%		
Total Premium Volume 1956—157,216 bbls.					
Total Pabst Volume 1956— 18,007 bbls.					
Pabst Percentage of 1956 Premium Volume: 11.5%					

The above sales and distribution figures show the necessity of increased selling, promotion and media advertising, if we are to obtain a fair share of this substantial premium beer market, which is roughly 25% of the total beer consumed in this market. The most important statistic is the total premium sales volume, indicating our potential case business is at least another 200,000 cases per year. In any attempt to improve our Washington, D. C. sales picture, we must consider the following facts about the market:

1. Three authoritative sources place the Negro population of Washington, D. C. between 45 and 55% of the total population.

   A. Highest Negro income per capita in nation.

      1. Opportunities offered Negroes with High School education for high income Government positions and large salaries offered.
      2. Due to increased Government employment of white women there has been a definite increase in the employment opportunities for

Negro women as day workers at a very high wage scale.

[fol. 337] B. Of the 1,711 outlets in Washington, D.C., it is estimated that Negroes patronize about 1,000 of these outlets. These outlets reportedly have about 70% Negro patronage.

C. Beer purchase frequency of Washington, D.C. Negro is 80% higher than non-Negro. The known Negro preference for premium beer, as compared to popular price beers, makes the above facts most important in any analysis of our sales potential of Washington.

2. Washington is unique in its vast number of well paid women wage earners—both married and single—who are employed by the Government and private enterprise. They constitute a source of tremendous influence and buying power.
3. 387 package liquor stores dominate the important off-premise business. Take home sales percentage of total consumption is greater in Washington than the national average. It is estimated as being 65% of the total beer consumed.
4. Premium beers comprise 40% to 50% of the on-premise sale because of the great number of visitors to our nation's capitol.

Considering the above facts, the following is recommended:

1. On-premise campaign April 1st to May 10th.

A. 300 planters to be placed in carefully selected on-premise outlets.

B. 100 top on-premise accounts where Pabst sales can be materially increased be assigned, approximately 25 each, to the four George M. Mason Company salesmen. They will concentrate on these accounts, making day and night calls to cultivate key personnel and owners for their help in influencing consumer purchases. The goal will be a 50% increase in each account. If a 20%—24/12 return bottle increase is af-

fected in the market during this period, the salesman with the highest percent of increase will receive a $100.00 bill and second highest $50.00 (distributor expense).

C. District law provides people be seated for on-premise service. The Planning and Merchandising Department should design and purchase 50,000 inexpensive place mats showing only the bottle and our name. This will provide additional consumer impressions at the time and place where consumer purchase decision is made. [fol. 338] Planning and Merchandising Department explore cost of 1,000 three or four inch waitress identification pins having Pabst name with space for waitress' name imprinted locally. These could be used effectively.

2. Off-Premise Campaign—April 25th to June 10th:

A. 300 clocks to be used as display forcer in volume off-premise outlets. Budget—$1,800.00.

B. This promotion must overlap on-premise because of district credit regulation which states retailers purchasing on the first of any month have until the 15th of the following month to pay before being declared delinquent. This promotion will include the important Decoration Day week-end. Objective is 70% of the 387 key package stores feature a Pabst display with emphasis on increased item distribution in these outlets.

C. To augment this off-premise promotion we propose to hire six colored models to work in key Negro package outlets once a week from 7:00 P.M. to 9:00 P.M. each Friday night. Our 10 oz. package being competitive with local case price would be featured by the models. Budget for models—approximately $80.00 per week to be split with distributor. George M. Mason Company colored representative will make on-premise calls with models after 9:00 P.M. Total budget—$250.00

D. There are 540 small grocer off-premise licensees

in the district. Recommend 400 cardboard 9" x 12" pieces of P.O.S. with gummed sticking pad on back. Suggested copy—"STOP! Did you forget to order beer? May we suggest Pabst Blue Ribbon?"

3. Off-Premise June 10th to August 10th:

   A. 300 Barbeque sets with appropriate P.O.S. as display forcer, based on previous experience of earlier off-premise promotion and tailor for July 4th week-end needs. Budget—$1,800.00.

Specific planned sales promotions beyond August will be forthcoming based on need and success of previous planning.

The above sales activity and promotion to be successful must be supported by additional media advertising with emphasis on item advertising, such as 10 oz. can—Old Tankard Ale—Ice-Pak, etc. Our distributor also feels strongly that our advertising should have some kind of snob appeal suggesting to Washington consumers that it is smart to drink Pabst Blue Ribbon. Checking various Washington media people, we recommend supplementary advertising emphasizing radio spots with limited newspaper ads.

[fol. 339] Reasons for radio spots:

1. Very high percentage of workers drive to and from work. 72% of population own cars and 13% of all families have two or more cars. Large percentage of population drives to and from work daily.
2. For budget purposes it is desirable to use all media, but radio seemed to offer more.
3. Because of Negro influence on Washington market, it is recommended we first consider Station WOOK, leading Washington Negro radio station. This station is owned by the United Broadcasting Company who, in addition, own radio stations in Baltimore, Maryland, Cleveland, Ohio, Newport News, Virginia and Richmond, Virginia. Their Baltimore and Cleveland stations are reputed to be the leading Negro

stations in their respective areas. Negro consumption of Pabst beer, as well as other premiums, is substantial in these markets (approximate average 25% in Cleveland and 35% in Baltimore). Visiting with Mr. Richard Eaton, President of this radio chain, he offered a minimum 25% saving of regular rates if we considered a 13-week trial campaign on all five stations. This, of course, to be backed with dealer mailing, merchandising aid and personal contact by station representatives. They are very anxious to demonstrate what they can do for us.
Recommend Washington, D.C. radio spots, if possible, be identified with colored disc pockey with personal appearances possible in key retail establishments. Rock and Roll knows no color line in the district. One available at present . . . Bob King? Suggest—if within budget—second radio station popular with non-Negro populace be considered. Budget—$3,000.-00 per month for five months beginning no later than April 10th. Total—$15,000.00.

Newspaper media:

1. Newspaper—one ad weekly—recommend we consider frequency rather than size. Copy, if possible, when not item advertising, local, and slanted toward women. Budget—$2,000.00 per month for five months beginning April 10th. Total—$10,000.00.

We recommend all media advertising, if possible, be directed through the George M. Mason Company at the local rate for the following reasons:

1. Savings affected—minimum of 25% on radio alone.
2. Local agency in a position to provide local color (Cherry-blossom time, etc.) and item copy to tie in with current sales promotion activity.
[fol. 340] 3. Local agency because of close personal relationship will obtain bargains—for instance, more radio spots than contracted for, preferred position in both newspaper and radio.

Recommend a basic privilege P.O.S. sign, very acceptable in Washington, be considered not to exceed a cost of over $10.00 because of ABC regulation.

A. Made of plastic with fluorescent light with blank space for privilege panel to be stenciled locally.
B. Pabst copy be pressed into plastic to prevent scraping and make certain colors do not fade in sunlight.
C. Two sizes to be considered: 24" x 14" and 14" x 24". The 14" will be unusual because it is vertical and could be used for domination.

Recommend: 500—24" x 14" and 250—14" x 24"
Budget: $7,500.00

Planning and Merchandising Department have been given a sample of the type P.O.S. sign recommended.

The above program is designed to stop our 10% downward trend in Metropolitan Washington, D.C. market and affect a 10% increase for the balance of 1957. This should represent an additional sale of 50,000 cases. Metropolitan Washington comprises the markets of Alexandria, Virginia—Kenilworth, Maryland—Silver Springs, Maryland, as well as the District of Columbia.

[fol. 341] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-155

For Intra-Company and Division Office Correspondence

PABST BREWING COMPANY
Los Angeles, California

Date: February 14, 1957.

To: Mr. R. H. Hehman
From: E. H. Sehram
Subject: Resume of Activities February 8th-14th

cc: M. S. Lachner
W. Dillingham

I was present at the filming of the opening and closing portions of the new 20-second and 60-second Western and Piano commercials. The center portion of the 1-minute version of both commercials were filmed, draft beer and "Real Tap Flavor . . . Now In Bottles & Cans". I was present to check the correct drawing of the draft beer.

A presentation of the Eastside Old Tap Lager Summer Barbecue promotion was made to the Fitzsimmons-Thriftimart chain (over 40 stores). This presentation was made to discuss refinements in the promotion before proceeding with its development.

John Stoakes arranged for the presentation and attended with me. No suggestions were made on improving the promotion. This chain wants the promotion for the 4th of July week, as well as the previous and following weekends. They want an exclusive on our suggested newspaper grocery ad masthead. This was given to them. They will use our suggested related item—all department price card idea. As we cannot furnish the cards legally, we will only suggest ideas.

A new interpretation of lighted signs in California has been handed down, which makes all of the present Old Tap Lager cash register signs now in the trade illegal. We have developed a method for the correction of these signs and are now in the process of doing same, enabling

us to hold our cash register positions. Our new 1957 Old Tap Lager cash register sign is legal.

Two agencies have contacted me regarding the possibility of being considered, should we be interested in changing agencies for Old Tap Lager. I have asked both of them to submit a summary presentation of their personnel and accounts in book form. When these are received, I will forward on for your review. The two agencies are Stromberg, LaVene and McKenzie and Ruthrauff & Ryan.

E. H. Sehram.

EHS:ddr

Noted WMS, MSL.

[fol. 342] IN THE UNITED STATES DISTRICT COURT

GOVERNMENT EXHIBIT No. GX-156

Minutes of a meeting of the Executive Committee of the Board of Directors of Pabst Brewing Company held at the office of the company, Suite 310, Merchandise Mart, Chicago, Illinois, on April 24, 1957, at 1:30 o'clock in the afternoon, pursuant to call by written notice.

Present: Messrs. Harold J. Buist, A. T. Kearney, M. S. Lachner, Robert E. Pabst, H. Perlstein and George F. Salerno, constituting a quorum of the members of the Executive Committee of the Board of Directors.

Mr. Harris Perlstein, Chairman of the Executive Committee, presided over the meeting, and Mr. E. B. Thornton, Secretary, recorded.

Discussion took place concerning the procedures and functions of the Executive Committee. The Chairman explained that data and information for submission to the Committee is being gathered primarily under his direction from various company officers and department heads; and that it is his practice to acquaint the President with such data and information and obtain from him anything additional which he might wish to have submitted to the Committee. Preparation of the agenda is handled in similar fashion. This procedure has the dual advantage of minimizing the drain on the President's time in connection with preparation for these meetings and utilizing the broader perspective which becomes possible to the Chairman due to his relative freedom from operating details. The Committee voiced its approval of these arrangements.

It was proposed that the Committee recommend to the Board of Directors certain changes in the bylaws to define the scope of the Committee's functions. The Committee now has all the powers of the Board except the power to amend the bylaws. It was agreed that the bylaws should be changed to state that the Committee also is not empowered to deal with election or compensation of officers, declaration of dividends, acquisitions of businesses, disposition of company property having a value

of over $500,000, long-term financing, nor any matters having to do with changes in the company's capital structure. Moved, seconded and carried that company counsel be instructed to prepare suitable changes to the bylaws for submission to the May meeting of the Board of Directors.

The financial report for March, 1957, was submitted and discussed, along with a report on beer sales submitted by the President. It was noted that sales of both beer and soft drinks for the first quarter were at a rate substantially below that required to meet the forecast annual levels. The President stated his conviction that the gains necessary to achieve the forecasts would be forthcoming [fol. 343] in the last three quarters. He advised that shipments of beer and ale have improved in April, and should exceed last April. However, loading by distributors during April is the big factor in this. This is due to the fact that the major union contract at Milwaukee expires on May 31, and negotiations for a new one have not progressed far enough to bar the possibility of a strike. But there are other factors which he regards as favorable. Old Tankard Ale is selling well, and we are brewing larger quantities to permit substantially increased shipments.

In 1956, our new item—Snap Cap quarts—had its greatest impact in the first quarter, when introductory stocking took place. In 1957, introductory stocking of our principal new item—Old Tankard Ale—is expected to have its greatest impact during the second and third quarters. For the first quarter ale shipments were 14,457 barrels, for the second quarter our stocks would permit shipment of about 57,000 barrels, and for the third quarter about 78,000 barrels.

Hoffman Beverage sales are also improving and will be ahead of last year for April, due largely to introduction of a new attractive non-returnable bottle (14 oz. content) for the Streamline (non-fattening) line, and introduction of the Hoffman brand in 10 oz. cans. Also, later in the year we will feature the addition of Vitamin C to the Hoffman flavors. The 1957 advertising campaign for Hoffman Beverages is attracting favorable attention.

For these reasons the factory burden and advertising reserves have continued to be set up on the basis of the

original volume forecasts. Committee members pointed out the need to review this situation from month to month, and particularly at the end of the first six months, to determine whether adjustment should be made in these reserves.

A memorandum was submitted for the information of the Committee, calling attention to the split of our business between on-premise (bars, restaurants, etc.) and off-premise (home trade) outlets, which brings out the fact that we do relatively better in the off-premise segment. Good on-premise business is especially important to a premium beer, and there is need to stress this continually to our organization and distributors, as well as in our own planning. In 1956, the decline in sales of Pabst to retailers was wholly on-premise. Due to improvement in quart volume resulting from our introduction of the Snap Cap, off-premise was slightly ahead for the year. Even in the second half, when introductory stocking of Snap Cap was out of the picture, the relative position remained the same, with on-premise bottles down 16%, 12 oz. cans down 10%, while quarts and half-quarts were up 14%, in comparison with 1955. (Significance of the increase in quarts for the latter half of 1956 in comparison with 1955 is greater than shown for the reason that introduction of Snap Can commenced in November, 1955, with resultant abnormal increase in quart volume for November and December, 1955.)

In attendant discussion of 1956 results, it was noted that our beer volume had shown increases in two segments, as a result of programs put into operation late in [fol. 344] 1955—namely, Pabst quart volume as above mentioned and Eastside Old Tap Lager. The situation for 1957 is parallel in that the two items (Old Tankard and Andeker) which promise additional volume this year were introduced late in 1956.

The President stated that special attention is now being given to the on-premise situation in two ways. First, the contents of the memorandum addressed to him by the Chairman dated April 5, 1957, which is included in the material submitted to the Committee, have been discussed with the staff and are being acted on. In essence, this means increased attention to doing a good on-premise job

with Old Tankard Ale. Second, in the second distribution of coupons in southern Wisconsin and northern Illinois there are included two five-cent coupons for on-premise use, one good toward the purchase of a bottle of Pabst Blue Ribbon and one good toward the purchase of a bottle of Old Tankard Ale.

A memorandum was also submitted presenting information concerning consumer promotions being used and proposed for beer. This included statistical information relating to couponing in Wisconsin and Illinois, covering sales results and costs to date, which the President considers to be favorable.

One coupon was put out in certain markets in Wisconsin and Illinois during February, good on beer or ale for 25¢ on the purchase of a Six Can Pak of 12 oz. or 16 oz. or a Big Twin Snap Cap Quart Pak. A second distribution of coupons is planned for these same markets at an early date. This will include a coupon good for 15¢ on 12 oz. or 16 oz. Six Can Pak or Big Twin Snap Cap Quart Pak, the two five-cent coupons above mentioned, and a ten-cent coupon good on the purchase of six cans of Pabst Sparkling Beverage. The cost of this last will be offset by promotional allowance to be received from American Can Company.

In addition, new territory in Illinois and Wisconsin will receive its first coupon of 15¢ off on selected packages for the Off-Premise trade, and 5¢ off on a bottle of Blue Ribbon Beer and 5¢ off on a bottle of Old Tankard Ale over the bar or On-Premise. This program will also be used in the State of Kansas, including Kansas City, Kansas, but not Kansas City, Missouri.

Couponing had been planned also for the State of Florida, but has been held up for legal reasons. If a court action which we instituted there is decided favorably this will be carried through.

No couponing not listed above will be done in 1957. This will give opportunity to evaluate the results accurately after the lapse of a time sufficient to determine the long range effect of these programs. This will take several months after the date of the last coupon distribution in any particular market.

It was pointed out that use of coupons or other con-

sumer promotions for beer is limited by state laws and regulations. Competitors aggravate the difficulties in this direction. Florida, already mentioned, is one example. Also, the Brewers' Association of America (formerly Small Brewers' Association) complained to the Alcohol Tax Unit in Washington in an attempt to have our [fols. 345-346] coupons declared illegal on a national basis, but we were able to defeat this move. As a further example, we ran into difficulty of potentially serious nature in New York State in connection with a promotional scheme used by a foreign language newspaper in New York City to promote sale of our products. Considerable stress was placed by Committee members on the need for following carefully the advice of our legal department in such matters, and the President expressed his complete agreement with this point of view.

The Committee next considered budgets submitted by management covering all general and administrative expenses and advertising, promotional and other selling expenses, including City Department and Branch expenses, for the year 1957. These amount to $27,608,670 for Pabst Brewing Company, plus $6,911,500 for Hoffman Beverage Company. These figures are the same as shown on the information furnished to the Board of Directors at its January meeting in total, but with certain line-by-line changes. It was moved, seconded, and carried that these budgets for Pabst Brewing Company totaling $27,608,670 be approved, but that this approval be considered as related to the volume forecasts for the various product categories which had been presented to the January, 1957, meeting of the Board of Directors, and that these volume forecasts be noted on the budgets and be considered as the minimums called for in connection with the expenditures budgeted. It was also moved, seconded, and carried that management be instructed to keep in as flexible a position as is practical in relation to these expenses, so that some reduction in these budgets will be possible if forecasted volumes later seem unlikely of attainment. In this connection it was recognized that many of the budgeted expenditures must be committed for well in advance and that by far the larger part of the budget is of fixed character so far as this year is concerned. However, a

limited degree of flexibility is possible. The President stated that he considers about $1,000,000 as on a reserve basis so far as advertising and promotional expenses are concerned, so reductions up to that amount might be achievable in that part of the budget. Most of the general and administrative expenses are inflexible, but not all. For instance, dues to the United States Brewers Foundation fluctuate with volume. Delivery costs, included in City Department and Branch expenses, follow volume in part. A special effort is under way to reduce the costs in these departments in other respects in order to meet reductions already present in the budgets as presented.

A study is necessary to determine how much over-all leeway there is in these budgets.

It was agreed that the approval of the budgets is to be considered as being on a product category basis—i.e., the budgets for Pabst Beer and Ale, Eastside Beer, Canned Soft Drinks, and Other Products are to be considered as separate. While approval within each category is not to be considered as being strictly on a line-by-line basis, it is to be so considered in the main. Specifically, it will be considered that management has the authority to shift an aggregate total of up to $200,000 between the various lines in any one product category, without alteration of [fol. 347] total. If shifts aggregating more than that are contemplated, prior approval is to be obtained from the Executive Committee.

It was also agreed that approval of budgets by the Executive Committee is to be effective without ratification by the Board of Directors, but that the Committee will inform the Board concerning such matters and will ask for ratification at the next succeeding meeting of the Board of Directors.

The President reported that during the past three months a great deal of study has been given to the advertising for Pabst Beer and Ale to determine whether or not we should change our agency for these products. Eight agencies, in addition to our present agency, have solicited our account, and have presented specific suggested campaigns. It is expected that the matter can be decided in the near future.

The Chairman reported that we have been approached

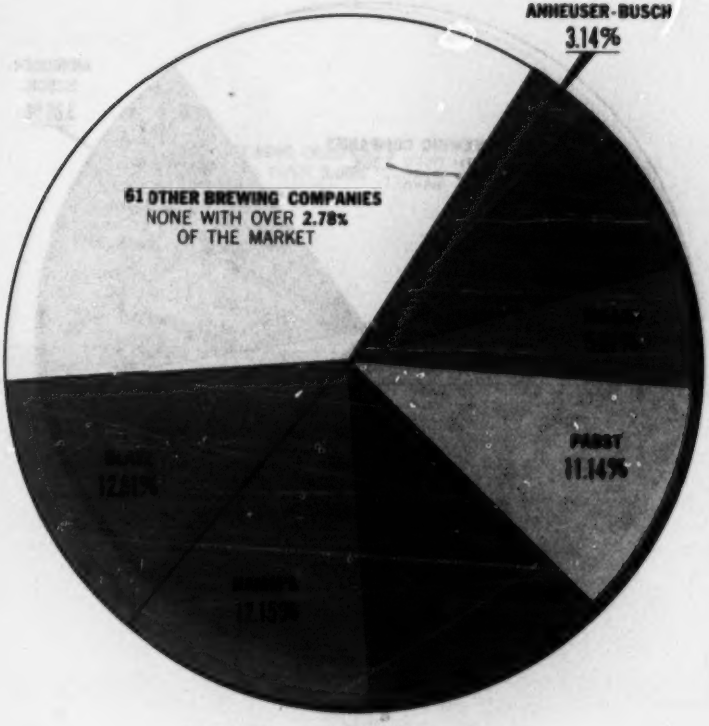
with a proposal that we purchase a block of stock of the Genesee Brewing Company of Rochester, New York, amounting to 60% of the voting stock, and a minority of the non-voting stock, but that he does not recommend serious consideration of this proposal.

There being no further business to come before the meeting, it was, on motion duly made, seconded and unanimously carried, adjourned.

E. B. Thornton, Secretary.

Government Exhibit No. GX–186

Percentage of Beer Sold in WISCONSIN by Major Brewing Companies in 1957

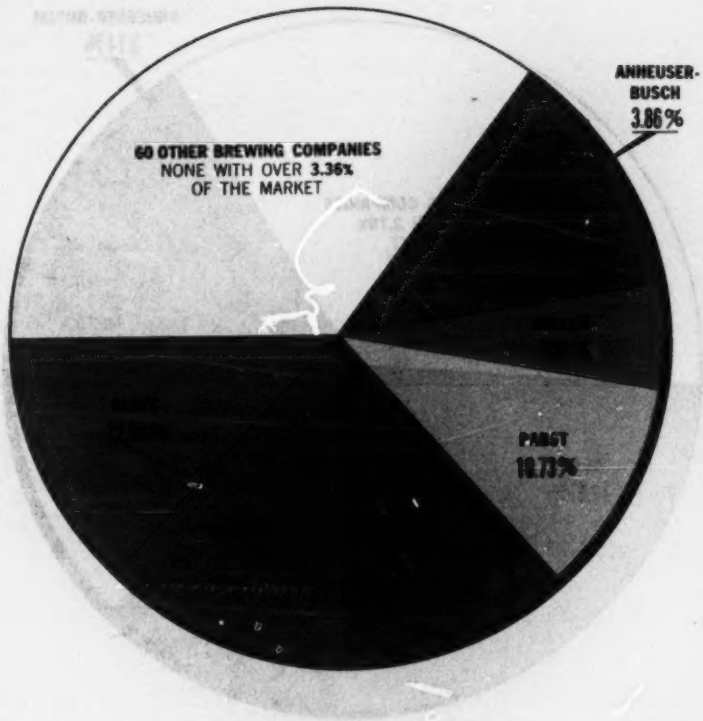


Source: State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes (JX 66)

[fol. 349] In the United States District Court

Government Exhibit No. GX–187

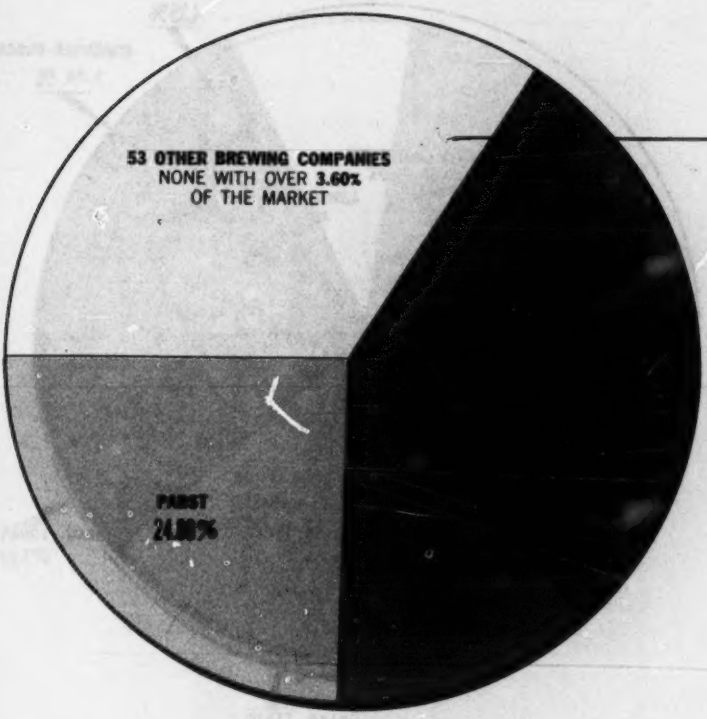
Percentage of Beer Sold in WISCONSIN by Major Brewing Companies in 1958



Source: State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes

(JX 69)

Percentage of Beer Sold in WISCONSIN by Major Brewing Companies in 1959

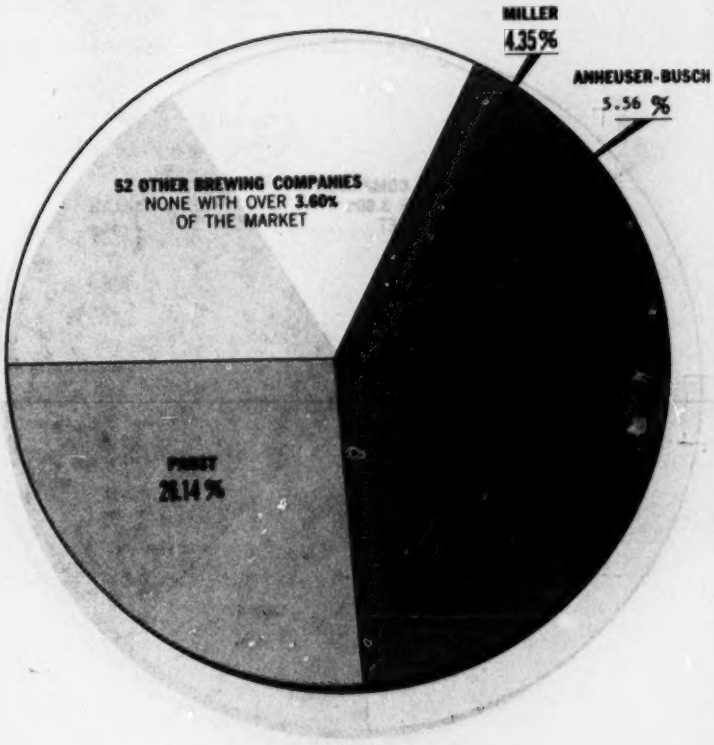


Source: State of Wisconsin Department of Taxation,
Division of Beverage and Cigarette Taxes
(JX 72)

[fol. 351] In the United States District Court

Government Exhibit No. GX–189

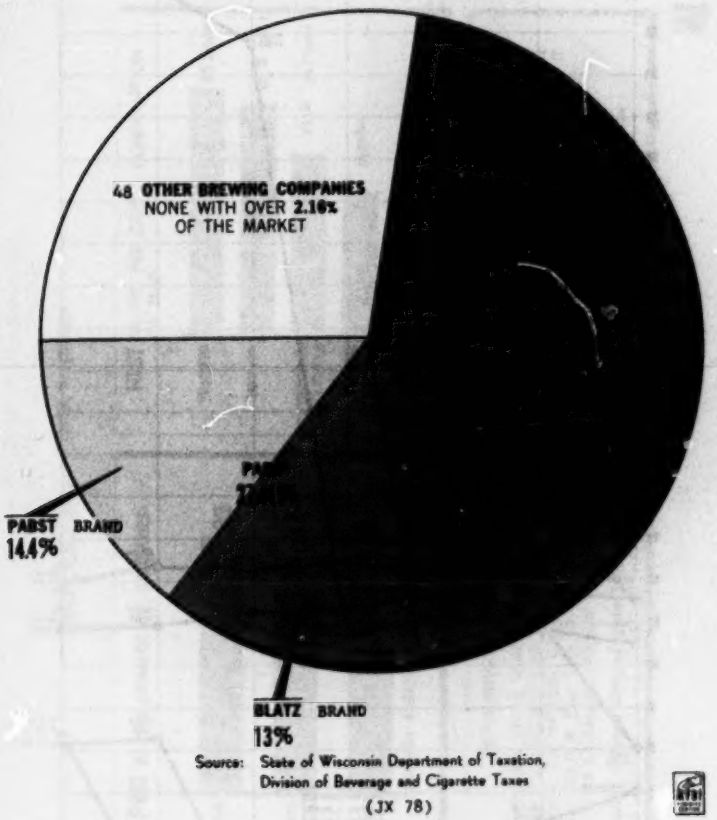
Percentage of Beer Sold in WISCONSIN by Major Brewing Companies in 1960



Source: State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes (JX 75)

[fol. 352] In the United States District Court
Government Exhibit No. GX-190

Percentage of Beer Sold in WISCONSIN by Major Brewing Companies in 1961

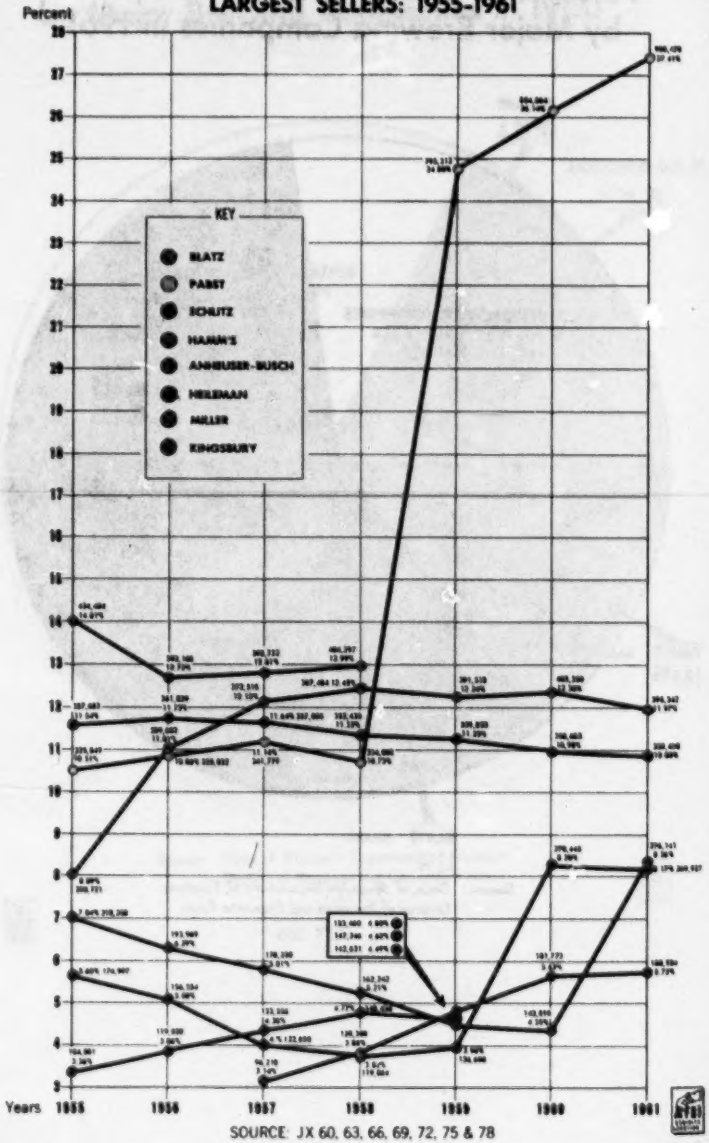


Source: State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes
(JX 78)

[fol. 353] In the United States District Court

Government Exhibit No. GX-191

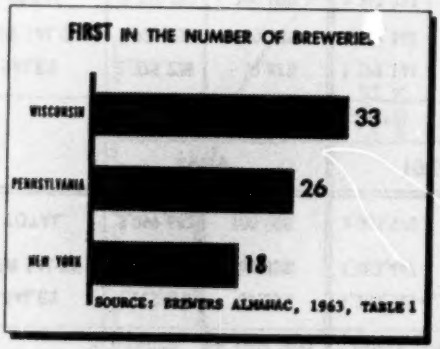
SALES OF BEER IN WISCONSIN BY THE LARGEST SELLERS: 1955-1961

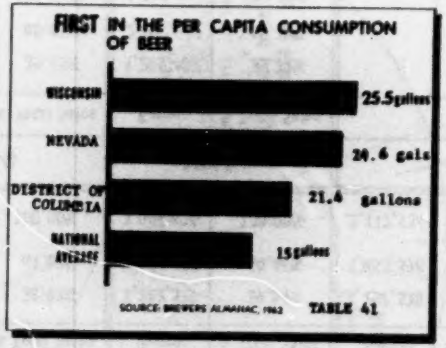


SOURCE: JX 60, 63, 66, 69, 72, 75 & 78

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-192A

WISCONSIN BEER STATISTICS





CONSUMPTION OF DRAUGHT BEER

IN **1961, 39%** OF THE BEER SOLD IN WISCONSIN WAS DRAUGHT BEER OR 10 **GALLONS** PER PERSON. THE NATIONAL AVERAGE OF DRAUGHT BEER SOLD IN **1961** WAS **19%** OF THE BEER SOLD OR **2.8 GAL.** PER PERSON.

SOURCE: BREWERS ALMANAC, 1962, TABLES 5,6, 41,42

FIRST IN THE EXPORTATION OF BEER

IN **1961** WISCONSIN BREWERIES SHIPPED **8,108,151** BARRELS OF BEER OUT OF WISCONSIN MAKING IT THE LARGEST STATE EXPORTER OF BEER.

SOURCE: WISCONSIN DEPARTMENT OF TAXATION

[fol. 354]

8327

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-193

DRAFT AND PACKAGE BEER SALES IN THE STATE OF WISCONSIN AS A PERCENTAGE OF TOTAL SALES

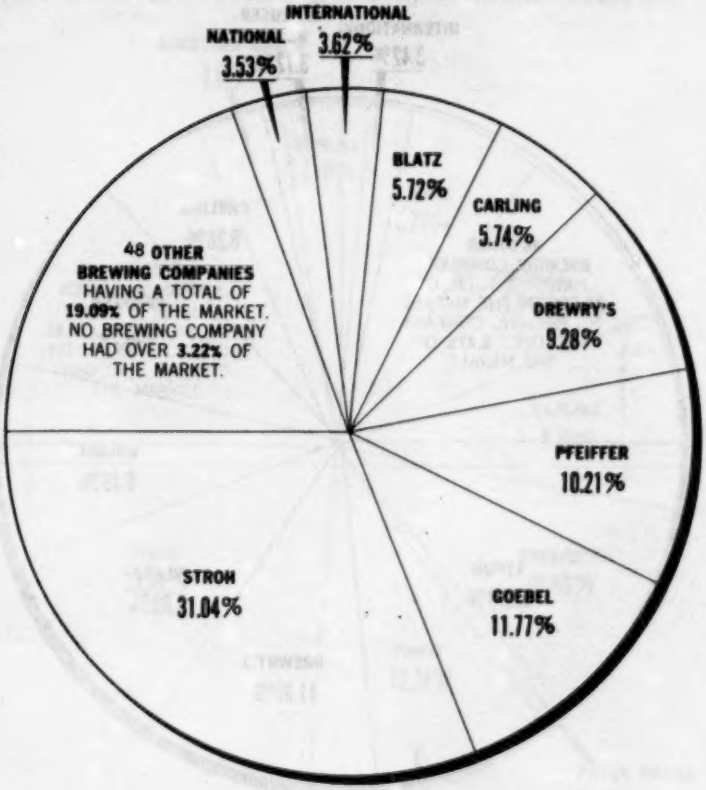
	1955		1956		1957		1958	
	Barrels	% Total Sales	Barrels	% Tctal Sales	Barrels	% Total Sales	Barrels	% Total Sales
DRAFT BEER SALES	1,225,876	39.55%	1,200,523	38.93%	1,212,517	39.54%	1,257,338	40.39%
PACKAGE BEER SALES	1,873,806	60.45%	1,883,447	61.07%	1,854,173	60.46%	1,855,596	59.61%
TOTAL	3,099,682	100.00%	3,083,970	100.00%	3,066,690	100.00%	3,112,934	100.00%

	1959		1960		1961			
	Barrels	% Total Sales	Barrels	% Total Sales	Barrels	% Total Sales		
DRAFT BEER SALES	1,275,228	39.87%	1,279,144	39.15%	1,295,402	39.22%		
PACKAGE BEER SALES	1,923,353	60.13%	1,988,168	60.85%	2,007,611	60.78%		
TOTAL	3,198,581	100.00%	3,267,312	100.00%	3,303,013	100.00%		

SOURCE: JX 60-80

Government Exhibit No. GX-194

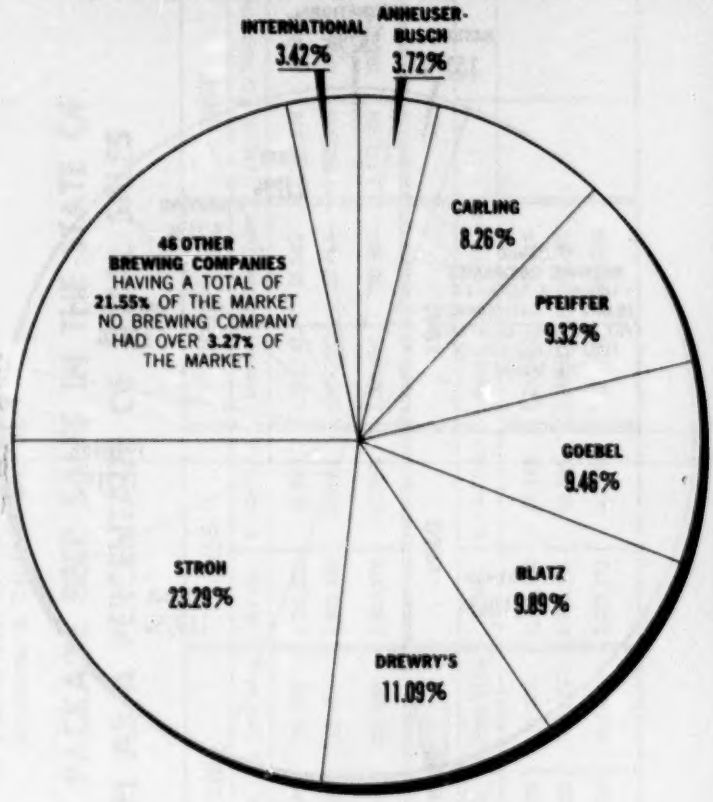
Percentage of Beer Sold in MICHIGAN by Major Brewing Companies in 1957



Source: Michigan Liquor Control Commission, Manufacturers and Wholesalers Department (JX 81)

[fol. 357] In the United States District Court
Government Exhibit No. GX-195

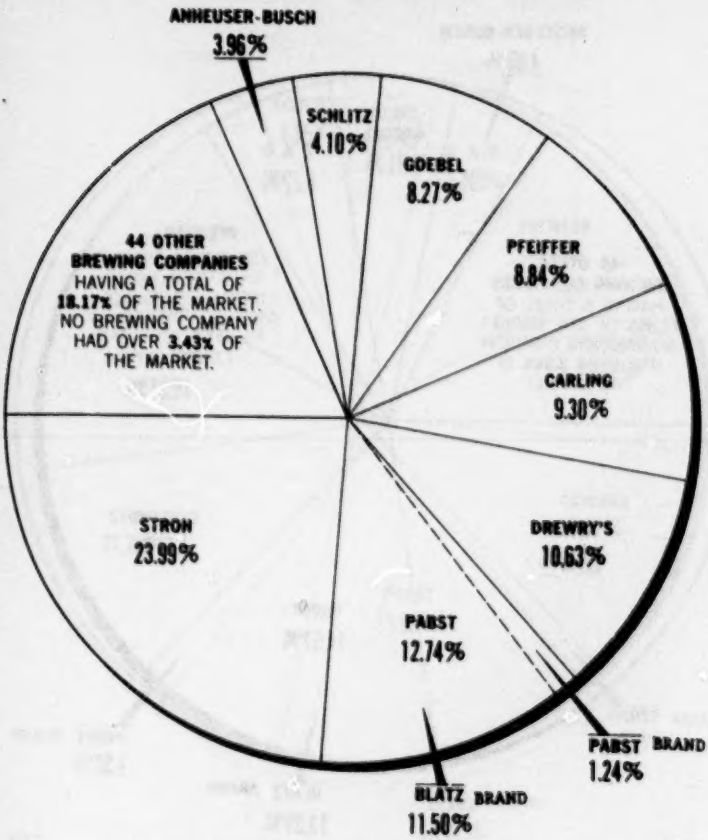
Percentage of Beer Sold in MICHIGAN by Major Brewing Companies in 1958



Source: Michigan Liquor Control Commission, Manufacturers and Wholesalers Department
(JX 82)

Government Exhibit No. GX–196

Percentage of Beer Sold in MICHIGAN by Major Brewing Companies in 1959

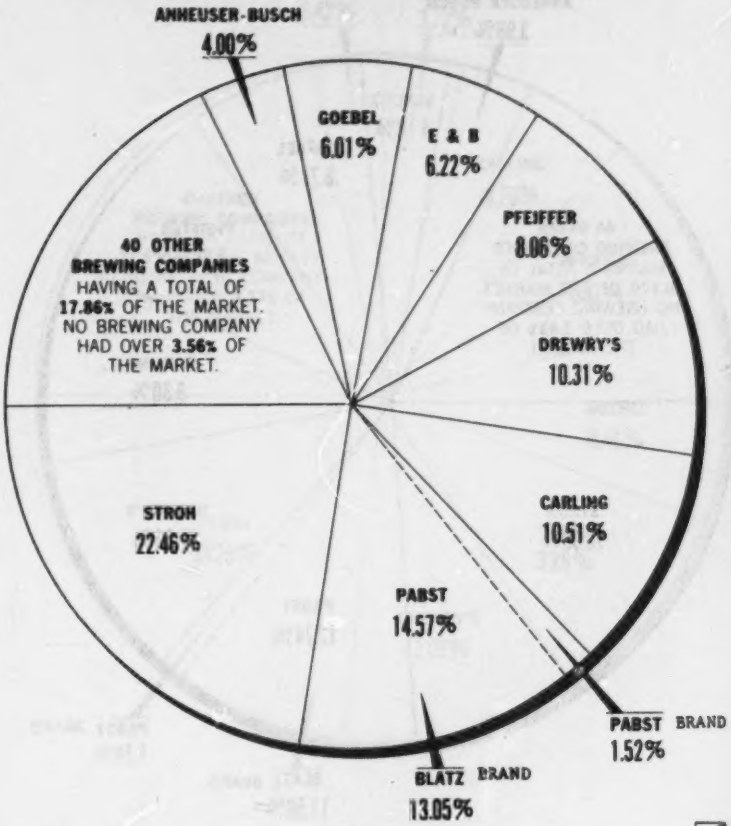


Source: Michigan Liquor Control Commission, Manufacturers and Wholesalers Department (JX 83)

[fol. 359] In the United States District Court

Government Exhibit No. GX-197

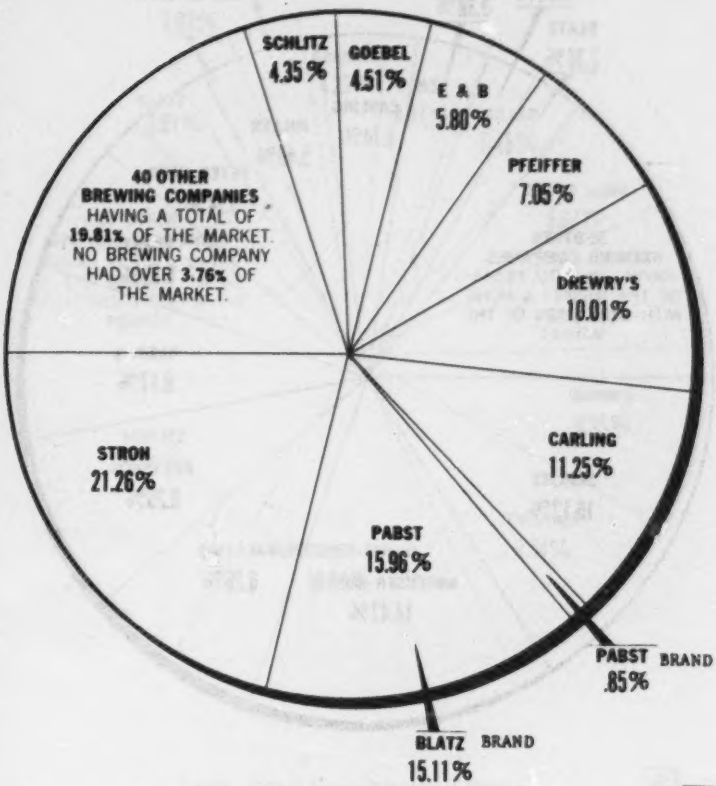
Percentage of Beer Sold in MICHIGAN by Major Brewing Companies in 1960



Source: Michigan Liquor Control Commission, Manufacturers and Wholesalers Department (JX 84)

Government Exhibit No. GX-198

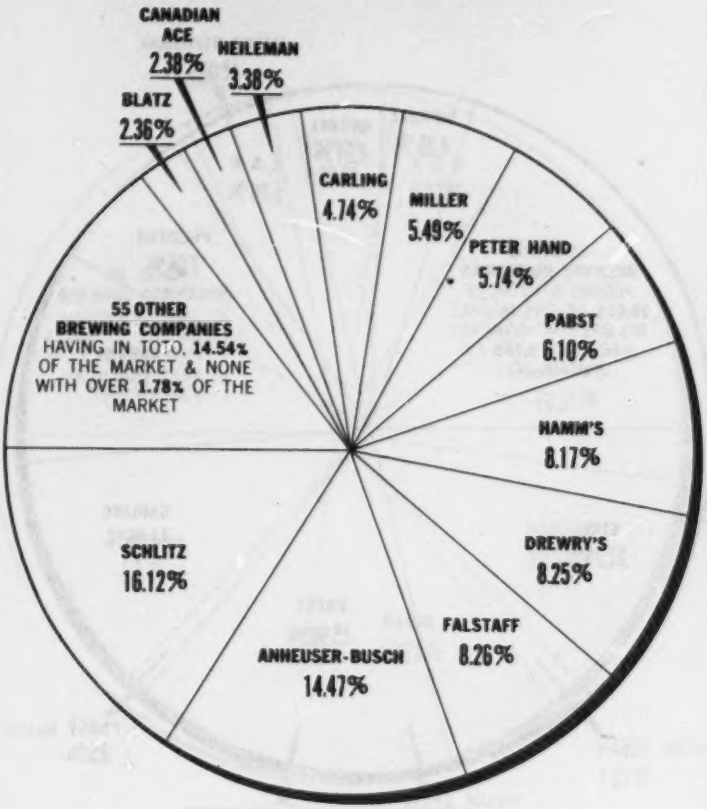
Percentage of Beer Sold in MICHIGAN by Major Brewing Companies in 1961



Source: Michigan Liquor Control Commission, Manufacturers and Wholesalers Department (JX 85)

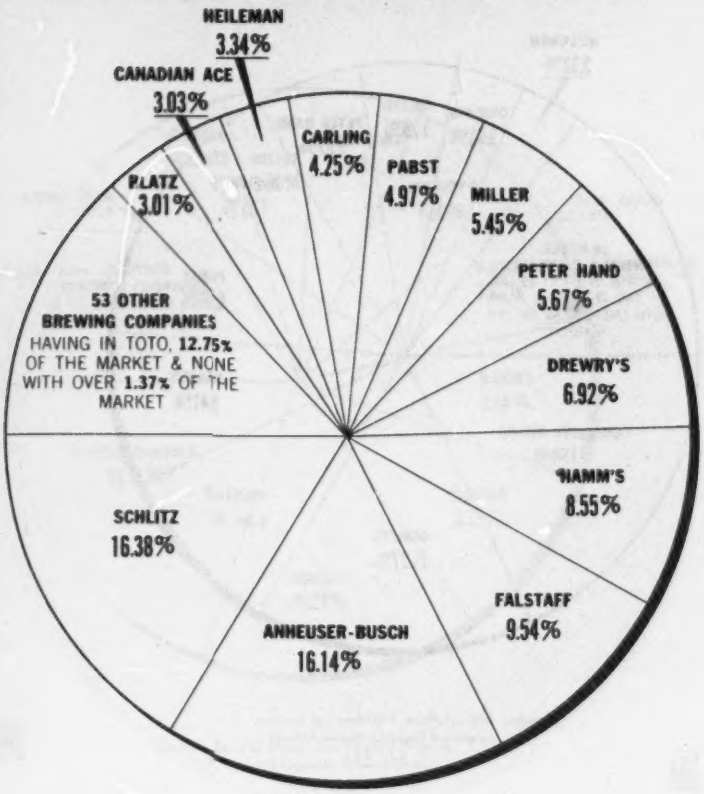
[fol. 361] In the United States District Court
Government Exhibit No. GX-199

Percentage of Beer Sold in ILLINOIS by Major Brewing Companies in 1957



Source: State of Illinois, Department of Revenue,
Liquor and Cigarette Revenue Division
(JX 86)

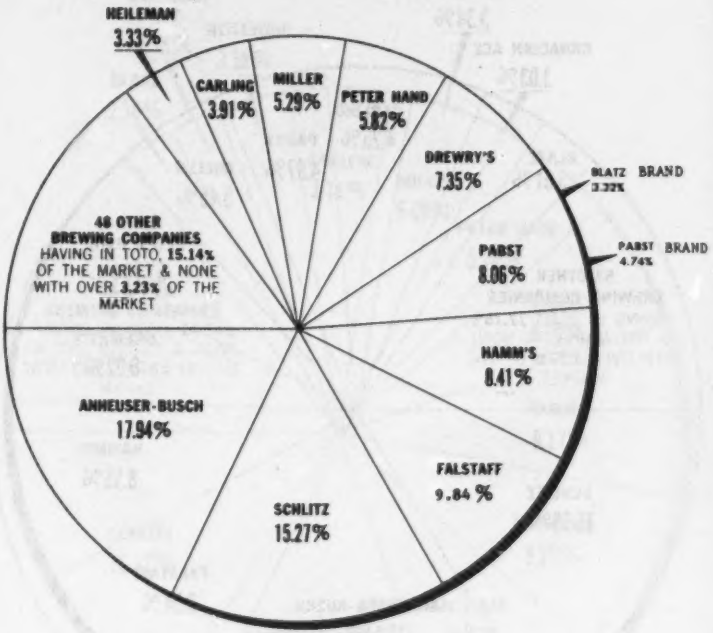
Percentage of Beer Sold in ILLINOIS by Major Brewing Companies in 1958



Source: State of Illinois, Department of Revenue,
Liquor and Cigarette Revenue Division
(JX 87)

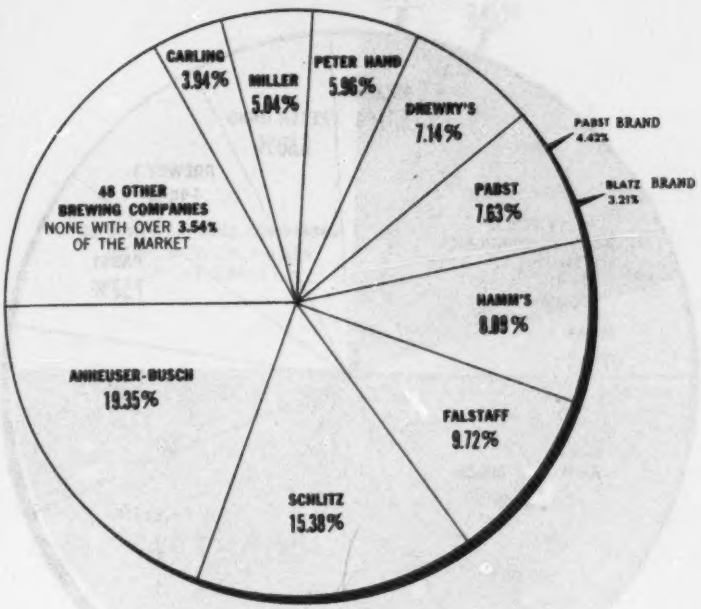
In the United States District Court
Government Exhibit No. GX-801

Percentage of Beer Sold in ILLINOIS by Major Brewing Companies in 1959



Source: State of Illinois, Department of Revenue,
Liquor and Cigarette Revenue Division
(JX 88)

Percentage of Beer Sold in ILLINOIS by Major Brewing Companies in 1960

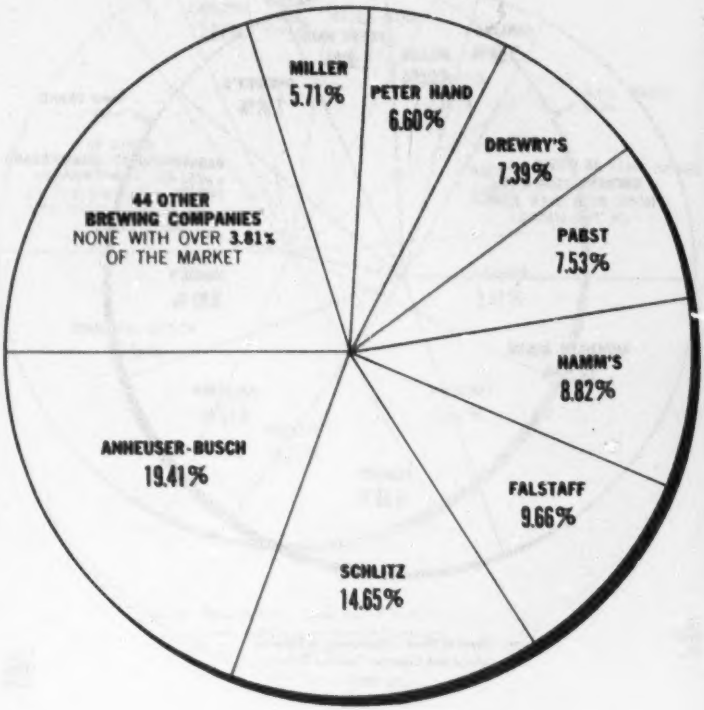


Source: State of Illinois, Department of Revenue,
Liquor and Cigarette Revenue Division
(JX 89)

[fol. 365] In the United States District Court

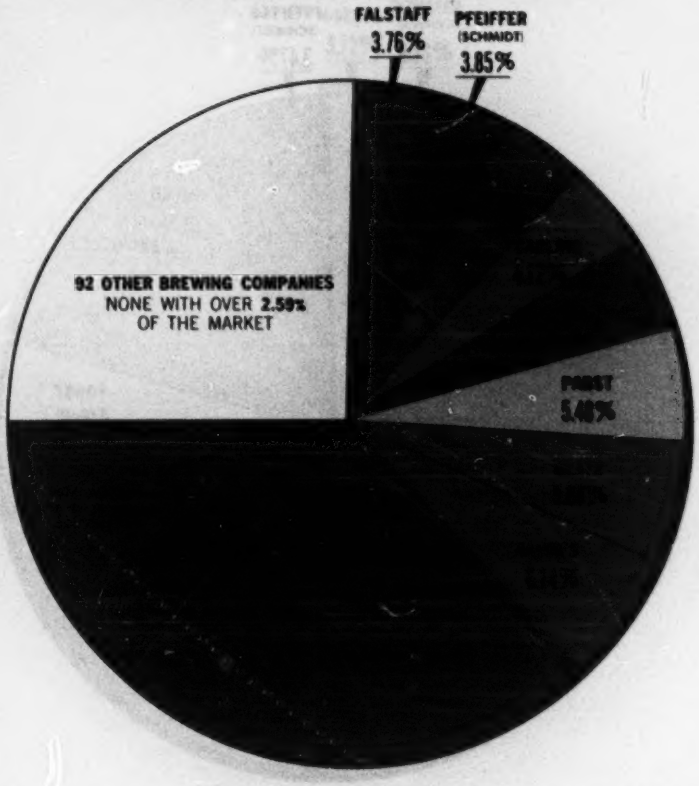
Government Exhibit No. GX-803

Percentage of Beer Sold in ILLINOIS by Major Brewing Companies in 1961



Source: State of Illinois, Department of Revenue,
Liquor and Cigarette Revenue Division
(JX 90)

Percentage of Beer Sold in the Three State Area of WISCONSIN, ILLINOIS and MICHIGAN by Major Brewing Companies in 1957



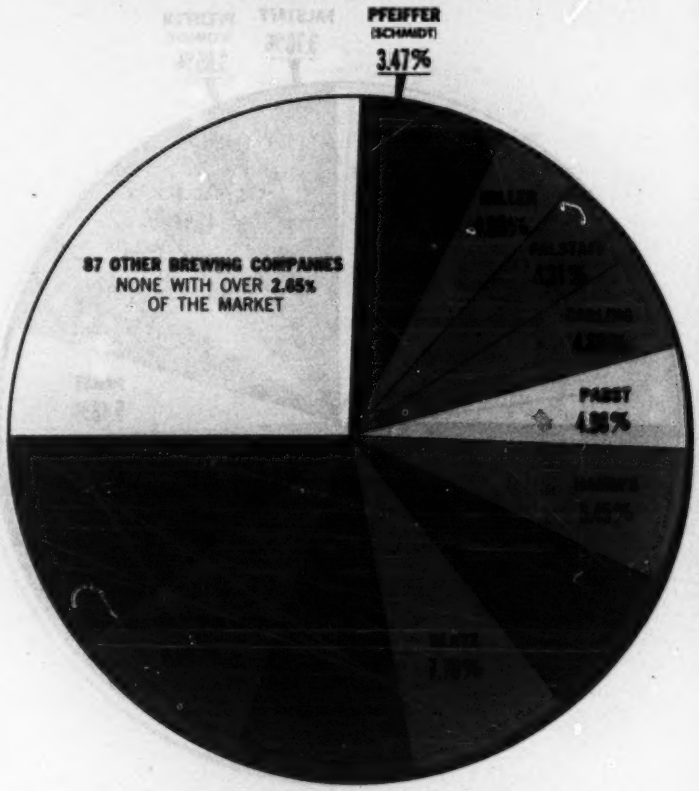
SOURCES: State of Illinois, Department of Revenue, Liquor and Cigarette Revenue Division
State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes
Michigan Liquor Control Commission, Manufacturers and Wholesalers Department

(JX 91, 92)

[fol. 367] In the United States District Court

Government Exhibit No. GX-206

Percentage of Beer Sold in the Three State Area of WISCONSIN, ILLINOIS and MICHIGAN by Major Brewing Companies in 1958



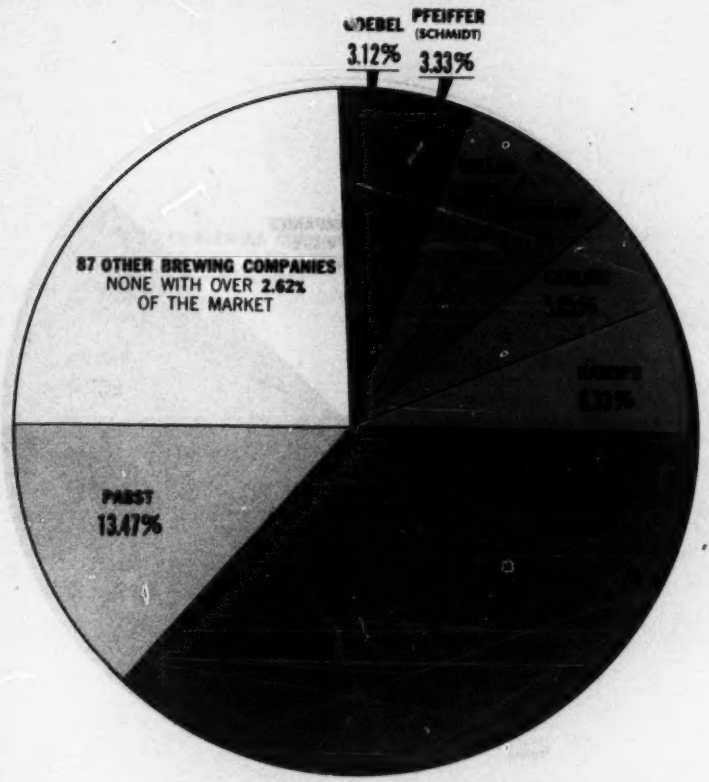
SOURCES: State of Illinois, Department of Revenue, Liquor and Cigarette Revenue Division

State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes

Michigan Liquor Control Commission, Manufacturers and Wholesalers Department

(JX 93, 94)

Percentage of Beer Sold in the Three State Area of WISCONSIN, ILLINOIS and MICHIGAN by Major Brewing Companies in 1959



SOURCES: State of Illinois, Department of Revenue
Liquor and Cigarette Revenue Division

State of Wisconsin Department of Taxation,
Division of Beverage and Cigarette Taxes

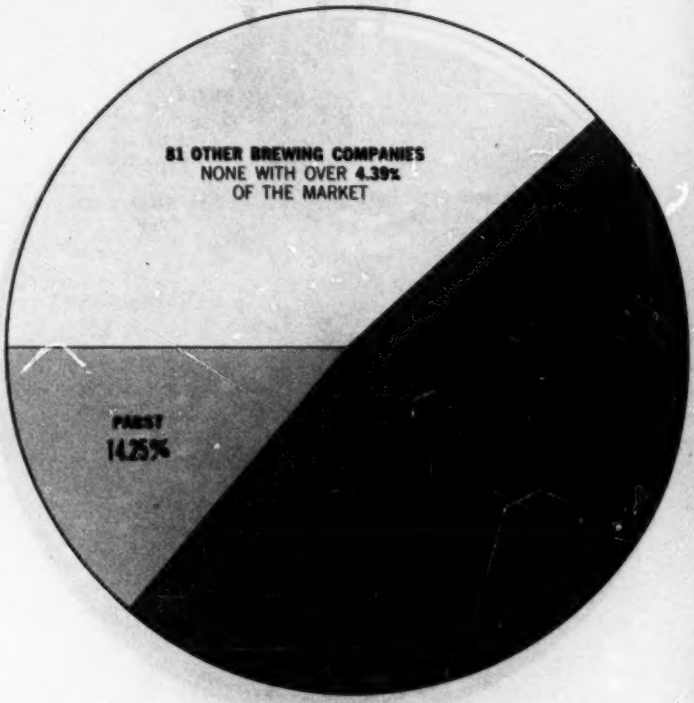
Michigan Liquor Control Commission, Manufacturers
and Wholesalers Department

(JX 95,96)

[fol. 369] In the United States District Court

Government Exhibit No. GX-207

Percentage of Beer Sold in the Three State Area of WISCONSIN, ILLINOIS and MICHIGAN by Major Brewing Companies in 1960

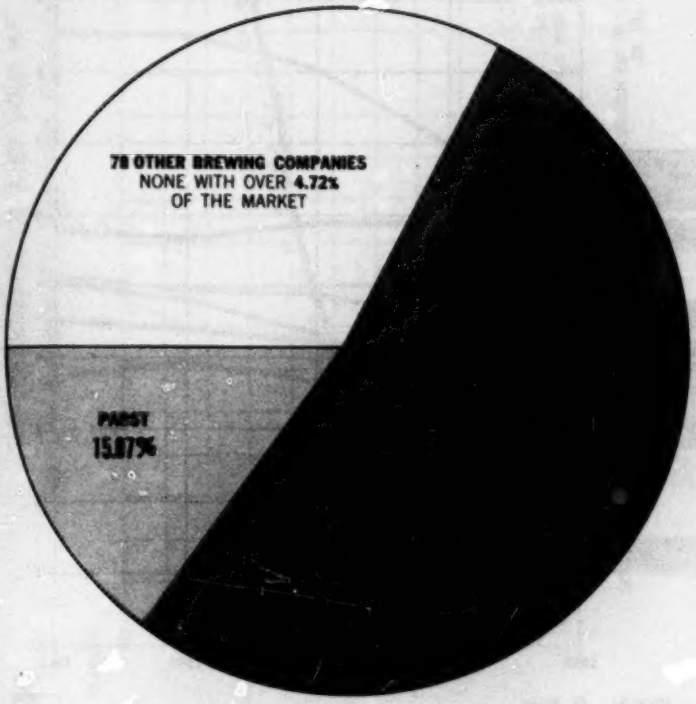


SOURCES: State of Illinois, Department of Revenue, Liquor and Cigarette Revenue Division
State of Wisconsin Department of Taxation, Division of Beverage and Cigarette Taxes
Michigan Liquor Control Commission, Manufacturers and Wholesalers Department
(JX 97, 98)

[fol. 370] In the United States District Court
Government Exhibit No. GX-208

343

Percentage of Beer Sold in the Three State Area of WISCONSIN, ILLINOIS and MICHIGAN by Major Brewing Companies in 1961

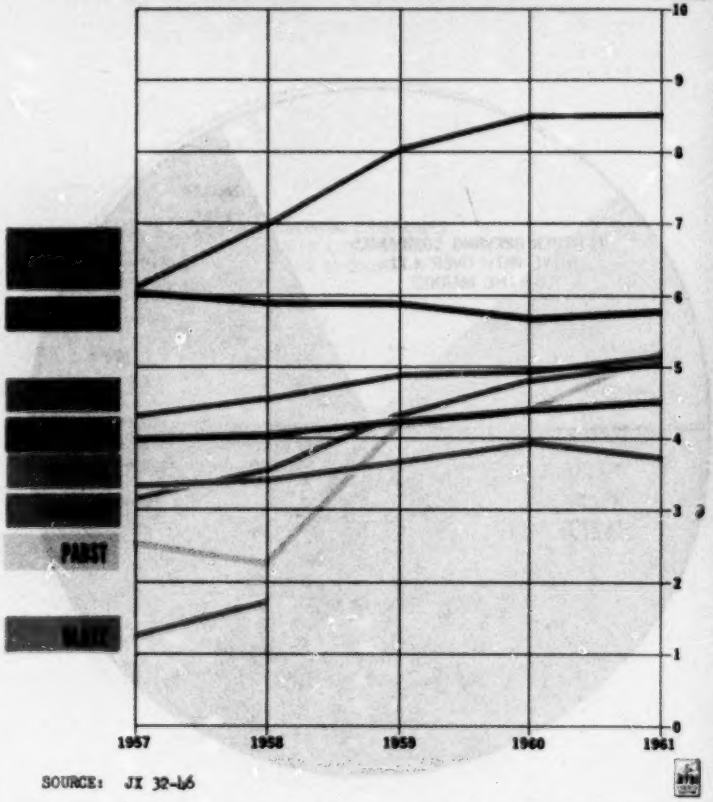


SOURCES: State of Illinois, Department of Revenue
Liquor and Cigarette Revenue Division
State of Wisconsin Department of Taxation,
Division of Beverage and Cigarette Taxes
Michigan Liquor Control Commission, Manufacturers
and Wholesalers Department
(JX 99, 100)

In the United States District Court
Government Exhibit No. GX-209

SALES OF BEER IN THE UNITED STATES BY MAJOR BREWING COMPANIES: 1957-1961

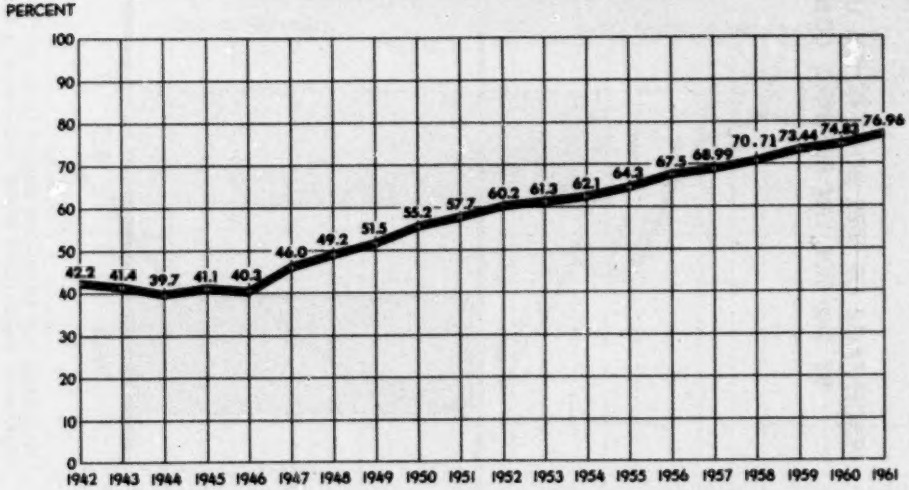
SHOWING PAST SALES OF INDUSTRY LEADERS AS OF 1961 AND SALES OF BLATZ



SOURCE: JX 32-46

Government Exhibit No. GX-210

THE PERCENTAGE OF BEER SOLD BY THE TOP TWENTY-FIVE BREWING COMPANIES

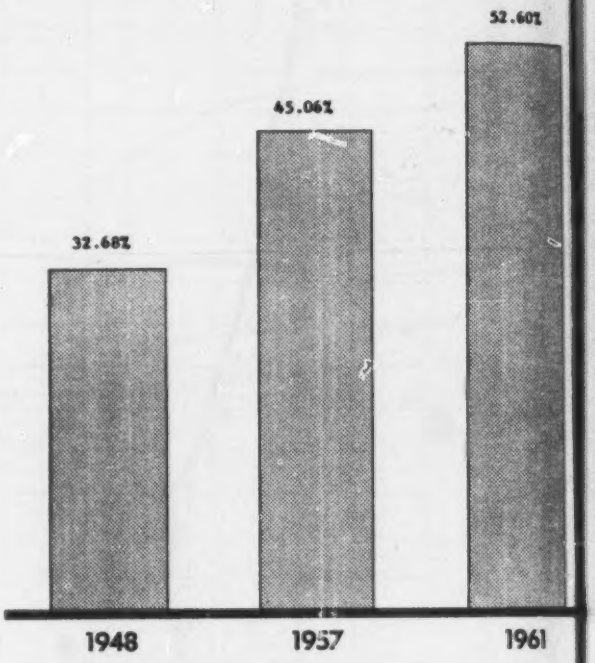


SOURCE: BREWING INDUSTRY SURVEY, 1958 (WITH THE EXCEPTION OF 1957, 1958, 1959, 1960, 1961)
JX 33, 35, 38, 41, 44

[fol. 373]

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-211

PERCENTAGE OF BEER SOLD IN THE UNITED STA
BY THE TOP TEN BREWING COMPANIES

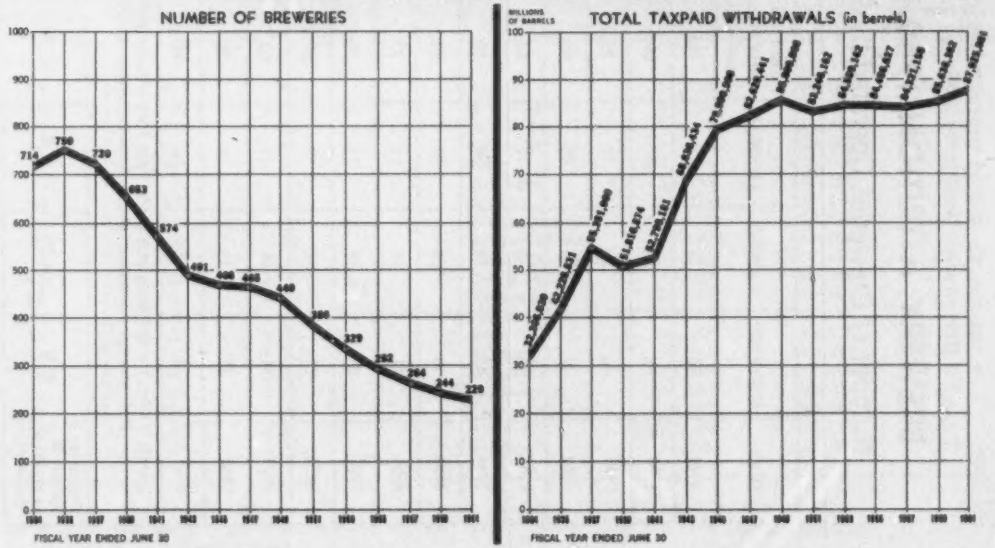


THUS, FROM 1948 TO 1961, THE MARKET SHARE OF THE TOP TEN BREW
COMPANIES INCREASED 19.92% SO THAT IN 1961, 6.2% OF THE BREW
COMPANIES SOLD OVER ONE HALF OF THE BEER IN THE UNITED STA

SOURCES:
1948 - BREWING INDUSTRY SURVEY, 1948, p. 78, JX 19
1957 - JX 32
1961 - JX 44-46

– the Trend Towards Concentration in the Brewing Industry

NUMBER OF BREWERIES OPERATING IN THE UNITED STATES
AND THEIR RELATION TO TAXPAID WITHDRAWALS



From 1935 to 1961 there has been a 69.47% decline in the number of breweries operating in the United States while, during this same period, there has been a 108.21% increase in the taxpaid withdrawals of beer.

SOURCE: MODERN BREWERY AGE-BLUE BOOK ISSUE, MARCH 1962, p. 218

[fol. 375] IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-213

BREWERY ATTRITION 1949-1961

Number of Breweries Operated* by States

YEAR	WISCONSIN	ILLINOIS	MICHIGAN	Three-state area of Wisc., Ill. and Mich.	UNITED STATES
1949	55	33	22	110	440
1950	52	32	21	105	407
1951	46	30	19	95	386
1952	46	26	18	90	357
1953	46	25	14	85	329
1954	45	22	14	81	310
1955	43	21	14	78	292
1956	43	21	13	77	281
1957	38	19	13	70	264
1958	38	17	12	67	252
1959	38	16	11	65	244
1960	33	15	10	58	229
1961	33	15	10	58	229
Source: Table 12 – BREWERS ALMANAC; 1960, 1963. "Compiled from reports of U. S. Treasury Department, Internal Revenue Service, Alcohol and Tobacco Tax Division."					
Percentage decline in the number of breweries	40.%	54.5%	54.5%	47.3%	48.%

* "Represents number operated during any part of year."

1961 PER CAPITA CONSUMPTION OF DRAUGHT BEER IN THE UNITED STATES
BY STATES REPORTING CONSUMPTION OF DRAUGHT BEER

State	Total Draught Consumption in Barrels	Population	Per Capita Consumption of Draught Beer in Gals.
Alabama	4,007	3,302,000	.04
Arizona	124,746	1,391,000	2.78
Arkansas	14,388	1,797,000	.25
Connecticut	308,267	2,614,000	3.66
Delaware	28,507	458,000	1.93
District of Columbia	63,368	761,000	2.58
Florida	294,789	5,222,000	1.75
Georgia	59,629	3,987,000	.46
Idaho	47,732	684,000	2.16
Indiana	207,041	4,711,000	1.36
Iowa	312,560	2,779,000	3.49
Kansas	139,874	2,194,000	1.98
Kentucky	231,418	3,076,000	2.33
Maine	54,860	992,000	1.71
Maryland	368,189	3,188,000	3.58
Michigan	882,315	7,934,000	3.44
Mississippi	9,835	2,215,000	.14
Missouri	342,030	4,378,000	2.42
Nebraska	223,018	1,431,000	4.83
Nevada	22,100	299,000	2.29
New Hampshire	51,900	621,000	2.59
North Carolina	51,591	4,614,000	.35
North Dakota	71,643	640,000	3.47
Ohio	1,001,335	9,876,000	3.14
Oklahoma	59,953	2,360,000	.79
Oregon	197,279	1,799,000	3.40
Pennsylvania	2,513,050	11,468,000	6.79
Rhode Island	182,278	867,000	6.52
South Carolina	41,719	2,407,000	.54
South Dakota	67,057	690,000	3.01
Tennessee	48,191	3,615,000	.41
Texas	187,470	9,788,000	.59
Utah	50,799	916,000	1.72
Vermont	12,865	395,000	1.01
Virginia	199,524	4,059,000	1.52
Washington	364,557	2,902,000	3.89
West Virginia	71,502	1,850,000	1.20
Wisconsin	1,295,400	4,022,000	9.98
Wyoming	11,749	338,000	1.08

The States of Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, and New York are not set out in Table 42 of the 1962 Brewers Almanac in regard to consumption of draught beer.

SOURCE: Brewers Almanac, 1962, Table 42

:5433

[fol. 377]

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-215

DRAFT AND PACKAGE BEER SALES IN 1960 AND 1961 IN VARIOUS STATES AS A PERCENTAGE OF TOTAL SALES

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Ce Total S
Alabama				
Draft Beer Sales	2,579	.47	4,007	.7
Package Beer Sales	541,601	99.53	564,251	99.3
Total	544,180	100.00	568,258	100.0
Arizona				
Draft Beer Sales	111,974	16.57	124,746	17.4
Package Beer Sales	563,913	83.43	589,432	82.5
Total	675,887	100.00	714,178	100.0
Arkansas				
Draft Beer Sales	13,267	3.55	14,388	3.7
Package Beer Sales	360,210	96.45	371,035	96.2
Total	373,477	100.00	385,423	100.0
Connecticut				
Draft Beer Sales	324,054	25.37	308,267	24.0
Package Beer Sales	953,467	74.63	975,602	75.9
Total	1,277,521	100.00	1,283,869	100.0
Delaware				
Draft Beer Sales	28,368	12.41	28,507	12.2
Package Beer Sales	200,231	87.59	204,502	87.7
Total	228,599	100.00	233,009	100.0

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Cent of Total Sales
trict of Columbia				
Draft Beer Sales	69,149	13.54	63,368	12.06
Package Beer Sales	441,622	86.46	462,069	87.94
Total	510,771	100.00	525,437	100.00
rida				
Draft Beer Sales	282,993	13.34	294,789	13.36
Package Beer Sales	1,838,256	86.66	1,911,956	86.64
Total	2,121,249	100.00	2,206,745	100.00
rgia				
Draft Beer Sales	57,539	8.24	59,629	8.19
Package Beer Sales	640,648	91.76	668,886	91.81
Total	698,187	100.00	728,515	100.00
ho				
Draft Beer Sales	43,955	16.43	47,732	17.05
Package Beer Sales	223,506	83.57	232,201	82.95
Total	267,461	100.00	279,933	100.00
iana				
Draft Beer Sales	208,274	9.21	207,041	9.19
Package Beer Sales	2,052,172	90.79	2,046,273	90.81
Total	2,260,446	100.00	2,253,314	100.00
a				
Draft Beer Sales	311,997	24.09	312,560	24.11
Package Beer Sales	983,268	75.91	983,865	75.89
Total	1,295,265	100.00	1,296,425	100.00
sas				
Draft Beer Sales	137,705	21.85	139,874	22.05
Package Beer Sales	492,450	78.15	494,426	77.95
Total	630,155	100.00	634,300	100.00

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Cent Total Sa
Kentucky				
Draft Beer Sales	200,933	17.13	231,418	20.62
Package Beer Sales	972,013	82.87	891,142	79.38
Total	1,172,946	100.00	1,122,560	100.00
Maine				
Draft Beer Sales	60,956	13.09	54,860	11.93
Package Beer Sales	404,626	86.91	404,821	88.07
Total	465,582	100.00	459,681	100.00
Maryland				
Draft Beer Sales	358,217	18.17	368,189	19.04
Package Beer Sales	1,613,524	81.83	1,566,022	80.96
Total	1,971,741	100.00	1,934,211	100.00
Michigan				
Draft Beer Sales	885,249	16.99	882,315	16.84
Package Beer Sales	4,325,904	83.01	4,357,908	83.16
Total	5,211,153	100.00	5,240,223	100.00
Mississippi				
Draft Beer Sales	7,617	2.11	9,835	2.65
Package Beer Sales	353,260	97.89	361,666	97.35
Total	360,877	100.00	371,501	100.00
Missouri				
Draft Beer Sales	353,688	15.87	342,030	15.71
Package Beer Sales	1,874,882	84.13	1,834,580	84.29
Total	2,228,570	100.00	2,176,610	100.00
Nebraska				
Draft Beer Sales	225,563	29.54	223,018	28.88
Package Beer Sales	537,974	70.46	549,280	71.12
Total	763,537	100.00	772,298	100.00

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Cent of Total Sales
raft Beer Sales	21,064	9.42	22,100	9.31
ackage Beer Sales	202,508	90.58	215,252	90.69
Total	223,572	100.00	237,352	100.00
mpshire				
raft Beer Sales	56,408	15.44	51,900	13.94
ackage Beer Sales	308,958	84.56	320,428	86.06
Total	365,366	100.00	372,328	100.00
Carolina				
raft Beer Sales	47,193	6.00	51,591	6.12
ackage Beer Sales	739,135	94.00	791,142	93.88
Total	786,328	100.00	842,733	100.00
Dakota				
raft Beer Sales	72,020	25.26	71,643	23.67
ackage Beer Sales	213,072	74.74	231,034	76.33
Total	285,092	100.00	302,677	100.00
raft Beer Sales	942,549	17.21	1,001,335	18.17
ckage Beer Sales	4,535,590	82.79	4,508,868	81.83
Total	5,478,139	100.00	5,510,203	100.00
a				
aft Beer Sales	54,404	8.62	59,953	9.58
ckage Beer Sales	576,454	91.38	565,906	90.42
Total	630,858	100.00	625,860	100.00
aft Beer Sales	201,899	25.27	197,279	24.04
ckage Beer Sales	597,109	74.73	623,513	75.96
Total	799,008	100.00	820,792	100.00

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Cent of Total Sales
Pennsylvania				
Draft Beer Sales	2,523,389	36.24	2,513,050	35.5
Package Beer Sales	4,439,062	63.76	4,566,904	64.5
Total	6,962,451	100.00	7,079,954	100.0
Rhode Island				
Draft Beer Sales	189,637	34.01	182,278	32.5
Package Beer Sales	367,892	65.99	378,330	67.5
Total	557,529	100.00	560,608	100.0
South Carolina				
Draft Beer Sales	46,443	11.03	41,719	9.4
Package Beer Sales	374,487	88.97	399,808	90.5
Total	420,930	100.00	441,527	100.0
South Dakota				
Draft Beer Sales	66,469	26.64	67,057	25.9
Package Beer Sales	183,078	73.36	191,792	74.1
Total	249,547	100.00	258,849	100.0
Tennessee				
Draft Beer Sales	51,024	5.84	48,191	5.3
Package Beer Sales	822,680	94.16	849,087	94.6
Total	873,704	100.00	897,278	100.0
Texas				
Draft Beer Sales	176,507	3.92	187,470	4.0
Package Beer Sales	4,324,099	96.08	4,483,301	95.9
Total	4,500,606	100.00	4,670,771	100.0
Utah				
Draft Beer Sales	49,730	20.82	50,799	21.2
Package Beer Sales	189,095	79.18	187,891	78.8
Total	238,825	100.00	238,690	100.0

	1960		1961	
	Barrels	Per Cent of Total Sales	Barrels	Per Cent of Total Sales
ont				
Draft Beer Sales	14,796	7.72	12,865	6.79
Package Beer Sales	176,852	92.28	176,602	93.21
Total	191,648	100.00	189,467	100.00
ginia				
Draft Beer Sales	169,682	12.60	199,524	13.77
Package Beer Sales	1,177,483	87.40	1,249,244	86.23
Total	1,347,165	100.00	1,448,768	100.00
hington				
Draft Beer Sales	352,973	26.76	364,557	26.26
Package Beer Sales	966,170	73.24	1,023,576	73.74
Total	1,319,143	100.00	1,388,133	100.00
t Virginia				
Draft Beer Sales	72,437	12.71	71,502	12.73
Package Beer Sales	497,573	87.29	490,379	87.27
Total	570,010	100.00	561,881	100.00
consin				
Draft Beer Sales	1,278,999	39.14	1,295,400	39.22
Package Beer Sales	1,988,349	60.86	2,007,754	60.78
Total	3,267,348	100.00	3,303,154	100.00
ming				
Draft Beer Sales	10,268	7.12	11,749	7.76
Package Beer Sales	133,959	92.88	139,645	92.24
Total	144,227	100.00	151,394	100.00

e: The States of Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, and New York are not set out in Table 42 of the 1961 and 1962 Brewers Almanac in regard to consumption of draught beer.

rces: 1960-1961 Brewers Almanac; 1961-1962 Brewers Almanac, Table 42.

Table 1

PRODUCTION OF MALT BEVERAGES IN THE UNITED STATES
Fiscal Years Ending June 30, 1863 - 1961

YEAR	BARRELS	YEAR	BARRELS	YEAR	BARRELS	YEAR	BARRELS
1863	1,765,827	1886	20,710,933	1911	63,283,123	1936	51,812,062
1864	3,459,119	1887	23,121,526	1912	62,176,694	1937	58,748,087
1865	3,657,181	1888	24,680,219	1913	65,324,876	1938	56,340,163
		1889	25,119,853	1914	66,189,473	1939	53,870,553
		1890	27,561,944	1915	59,808,210	1940	54,891,737
1866	6,207,401			1916	58,633,624		
1867	6,291,184	1891	30,497,209	1917	60,817,379	1941	55,213,850
1868	6,146,663	1892	31,856,626	1918	50,266,216	1942	63,716,697
1869	6,342,055	1893	34,591,179	1919	27,712,648	1943	71,018,257
1870	6,574,617	1894	33,362,373			1944	81,725,820
		1895	33,589,784	*Prohibition Period		1945	86,604,080
				1920	9,231,280		
1871	7,740,260	1896	35,859,250	1921	9,220,188	1946	84,977,700
1872	8,659,427	1897	34,462,822	1922	6,347,199	1947	87,856,902
1873	9,633,323	1898	37,529,339	1923	5,268,709	1948	91,291,219
1874	9,600,897	1899	36,697,634	1924	4,890,545	1949	89,735,647
1875	9,452,697	1900	39,471,593	1925	5,118,594	1950	88,807,075
				1926	4,855,551		
1876	9,902,352	1901	40,614,258	1927	4,382,335	1951	88,976,226
1877	9,810,060	1902	44,550,127	1928	4,161,284	1952	89,600,916
1878	10,241,471	1903	46,720,179	1929	3,866,141	1953	90,433,832
1879	11,103,084	1904	48,265,168	1930	3,681,183	1954	92,561,067
1880	13,347,111	1905	49,522,029	1931	3,136,888	1955	89,791,154
				1932	2,765,858		
1881	14,311,028	1906	54,724,553	Since Relegalization		1956	90,697,911
1882	16,952,085	1907	58,622,002			1957	89,881,935
1883	17,757,892	1908	58,814,033	1933	11,059,071	1958	89,010,812
1884	18,998,619	1909	56,364,360	1934	37,678,313	1959	90,973,768
1885	19,185,953	1910	59,552,299	1935	45,228,605	1960	94,547,867
						1961	93,496,452

Beer production figures from 1863 through 1890 are the same as taxpaid withdrawals, since there is no record of export. All beer was taxed and the exporter applied for a drawback. From 1891 on, tax-free barrels for export are included in the production figures.
* Beer during Prohibition was a cereal beverage containing less than 1/2 of 1 per cent alcohol by volume.
Source: United States Treasury Department, Bureau of Internal Revenue, Alcohol and Tobacco Tax Division.

[fol. 384]

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-252

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Table 12
Brewers Almanac
1960, 1963

NUMBER OF BREWERIES OPERATED */ BY STATES
Fiscal Years Ended June 30, 1949-1961

State	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
Arizona	1	1	1	1	1	1	1	1	1	1	1	1	1
California	24	17	16	16	16	16	16	15	14	15	15	13	13
Colorado	5	4	4	4	3	4	4	3	3	3	3	3	3
Connecticut	2	2	2	2	2	2	2	2	1	1	1	1	1
Delaware	2	2	2	1	1	1	1	-	-	-	-	-	-
Dist. of Columbia	1	1	1	1	1	1	1	1	-	-	-	-	-
Florida	6	6	6	6	6	6	6	6	6	5	7	7	7
Georgia	1	1	1	1	1	1	1	-	-	1	1	1	1
Hawaii	5	5	5	5	5	5	5	5	5	4	4	4	4
Idaho	4	3	3	2	2	2	1	1	1	1	1	1	-
Illinois	33	32	30	26	25	22	21	21	19	17	16	15	15
Indiana	12	12	11	9	7	6	6	6	5	5	5	4	4
Iowa	3	3	3	3	3	3	3	3	2	2	2	2	2
Kentucky	6	6	6	6	6	6	5	5	5	5	5	5	5
Louisiana	6	5	5	5	4	4	4	4	4	4	4	4	4
Maryland	7	7	7	7	7	6	6	6	6	6	6	6	7
Massachusetts	14	13	13	12	9	8	8	9	9	7	7	7	7
Michigan	22	21	19	18	14	14	14	13	13	12	11	10	10
Minnesota	18	18	18	18	16	14	14	14	14	13	13	13	13
Missouri	11	10	10	10	9	9	9	9	9	7	7	6	6
Montana	8	7	7	7	6	5	5	5	5	5	3	3	3
Nebraska	4	4	4	4	4	4	3	3	3	3	3	3	3
Nevada	1	1	1	1	1	1	1	1	1	-	-	-	-
New Hampshire	1	1	-	-	-	-	-	-	-	-	-	-	-
New Jersey	13	11	10	9	9	9	9	9	9	9	8	8	8
New York	40	36	36	27	27	26	26	24	23	23	21	19	18
North Carolina	1	1	1	1	1	1	1	1	1	-	-	-	-
North Dakota													1
Ohio	39	35	31	30	24	20	16	15	14	14	13	13	12
Oklahoma	1	1	1	1	1	1	1	1	1	1	1	1	1
Oregon	2	2	2	2	2	1	1	1	1	1	1	1	1
Pennsylvania	60	57	53	47	44	40	34	32	29	28	27	26	26
Rhode Island	2	2	2	2	2	2	2	2	2	2	1	1	1
Tennessee	2	2	2	2	2	2	1	-	-	-	-	-	-
Texas	7	7	7	7	6	6	6	6	6	6	6	6	7
Utah	2	2	2	2	2	2	2	2	2	2	2	2	2
Virginia	4	4	4	4	3	3	3	3	3	3	3	2	2
Washington	11	10	11	10	9	9	9	8	8	7	7	7	7
West Virginia	1	1	1	1	1	1	1	1	1	1	1	1	1
Wisconsin	55	52	46	46	46	45	43	43	38	38	38	33	33
Wyoming	3	2	2	1	1	1	-	-	-	-	-	-	-
Total	440	407	386	357	329	310	292	281	264	252	244	229	229

*/ Represents number operated during any part of the year.

Source: Compiled from reports of U. S. Treasury Department, Bureau of Internal Revenue, Alcohol and Tobacco Tax Division

DIGEST OF STATE LABELING REQUIREMENTS ON FERMENTED MALT BEVERAGES

Y—(1) Federal Alcohol Administration labeling regulations adopted?
(2) Alcoholic content statement required?
(3) Label approval required?
(4) Special provisions.

ABAMA—(1) No; (2) No provi-ons; (3) No.

ASKA—(1) No; (2) No pro-isions; (3) No provisions.

ZONA—(1) Yes; (2) Not per-itted, FAA; (3) No; (4) Mis-beling or misbranding prohibited state pure food law.

ANSAS—(1) No; (2) No; (3) o; (4) Package beer must have ll name of the manufacturer on bel; bottled beer, in addition, st have name or trade mark on p or cork of bottle. Bulk con-iners must have full name of anufacturer stamped on ends in ll view.

IFORNIA—(1) No.; (2) Any rson who sells or otherwise dis-es of, except for export, any ught beer containing more an 4% of alcohol by weight, and y person who sells or other-se disposes of, except for ex-rt, any bottled beer containing re than 4% by weight, is ilty of a misdemeanor. This tion does not apply to the sale ale, porter, brown, and stout bottles bearing labels properly scribing the contents under any enses, other than on-sale beer enses. (3) No; (4) True name d address of manufacturer must stated on label of all beer and name and address of bottler other than manufacturer.

COLORADO—(1) No; (2) 3.2 must carry statement which clearly indicates that the beverage contains not more than 3.2% alcohol by weight; (3) No.

CONNECTICUT—(1) Yes; (2) Not permitted, FAA; (3) Yes; each brand must be registered with the Liquor Control Commission before sale in state is allowed; (4) Labeling which in any deceives purchaser or consumer is prohibited. Commission has power to regulate labeling.

DELAWARE—(1) Yes; (2) Not permitted, FAA; (3) No; (4) Labels must precisely and clearly indicate nature of contents of bottle and must not deceive as to nature, composition or quality.

DISTRICT OF COLUMBIA—(1) FAA applies; (2) Not permitted, FAA; (3) Must be approved by FAA; (4) Label may not include any insignia which might lead consumer to believe that any person or institution associated with this insignia has endorsed the product. Label must carry brand name and address of brewer, bottler or wholesaler.

FLORIDA—(1) Yes; (2) Not required by beer law—food and drug law requires maximum alcoholic content to be shown but this is not enforced; (3) Yes.

Labeling Requirements

GEORGIA—(1) No; (2) No; (3) Yes; label must be registered with and approved by the State Revenue Commissioner.

HAWAII—(1) Yes; (2) Not permitted, FFA; (3) No provisions.

IDAHO—(1) No; (2) No; (3) No; (4) Each different brand keg or barrel container must be labelled by different colored bungs. Color designations must be listed with the Commissioner of Law Enforcement; retail accounts informed of color designations.

ILLINOIS—(1) Yes; (2) No; (3) Must be approved by Commission; (4) Labels must bear name and address of manufacturer and also name and address of bottler; if bottled for another, name and address of person for whom bottled must appear in addition to name of manufacturer.

INDIANA—(1) No; (2) Not permitted; (3) Yes. Brands and labels registered with ABC.

IOWA—(1) No; (2) Label must state "This beer does not contain more than four per centum of alcohol by weight". Abbreviation; i.e., 4% may not be used; (3) No.

KANSAS—(1) Over 3.2; (2) Labels must read, in not larger than 8-point gothic caps; "Over 3.2% alcohol by weight" or "Contains more than 3.2% alcohol by weight" or similar statement approved in writing by director. No such provision for 3.2% beer; (3) Labels for beer having an alcoholic content in excess of 3.2% must be approved by the Director of Alcoholic Beverage Control.

KENTUCKY—(1) No; (2) Not permitted. No label may contain any words or numerals likely to be considered a statement of coholic content; (3) No, but la must be filed with the State Bo of Health, Louisville.

LOUISIANA—(1) No; (2) Not quired but if alcoholic conten stated it must be accurate must be by volume; (3) Pro registered annually with S Board of Health; (4) By boar health requirement labels on beverages must show name of pr uct, net content of packages name and address of manufactu

MAINE—(1) Yes; (2) Not p mitted; (3) No provision.

MARYLAND—(1) No; (2) provisions; (3) No.

MASSACHUSETTS—(1) No; Malt beverages containing than 3.2% alcoholic conten weight must be so labeled; No; (4) Massachusetts manu turers required to show stat cense number on brand labels person who bottles specially a retailer must state bever were bottled by him. Person bottles alcoholic beverages ceived in bulk must put manufacturer's federal permit num on label as well as his own license number.

MICHIGAN—(1) No; (2) Not mitted; (3) Three copies of label must be submitted to mission for approval; (4) mission follows FAA if no conflict with its own regula

MINNESOTA—(1) Yes; (2) product contains more than of alcohol by weight, label so state or read: "Strong etc. Cans containing strong must have word "Strong" ap ing on one end. If product tains less than ½ of 1 per c of alcohol by volume, label

ing Requirements

state. If product contains more n ½ of 1 per centum of al-ol by volume and not more n 3.2% by weight, alcoholic tent shall be stated and prod- labeled: "Contains not more n 3.2% of alcohol by weight" "3.2% of alcohol" or similar ression of like meaning; (3) el approval must be secured n Minnesota commissioner; Label must state brand name, s of beer, net contents, tax-l, name and address of bot-

SSIPPI—(1) No; (2) Noth- permitted except statement alcoholic content is not in ex- of 4% by weight; (3) No; There must be plainly stamped each container full name of manufacturer of the beverage. ainers of draught beer must full name of manufacturer e beer stamped on each end.

URI—(1) Yes, insofar as not nsistent with state laws or reg-ons; (2) Labels of stronger 3.2% beer may not show al-lic content; (3) No; (4) On beer bottles and cans, labels state: "Alcoholic content not ccess of 3.2% by weight or olic content not in excess of by volume." Draught kegs be stamped on ends with full of brewer.

ANA—(1) Yes; (2) Label state, not over 4% by t; (3) No; (4) Labels must nature of contents, name of r, place where beer was brew-lature of contents must be by use of word "beer," "stout" or "porter."

NEBRASKA—(1) No; (2) Optional; (3) No; (4) No label may be misleading; must show container quantity.

NEVADA—(1) No; (2) No provisions; (3) No.

NEW HAMPSHIRE—(1) No; (2) Permitted; (3) FAA only.

NEW JERSEY—(1) Yes; (2) Not permitted, FAA; (3) FAA only.

NEW MEXICO—(1) No; (2) No; (3) No; (4) All containers must bear label, amount of contents, trademark, brand or name of brewer, bottler or wholesale distributor.

NEW YORK—(1) Yes; (2) Not permitted, FAA; (3) No; (4) Labels complying with FAA regulations will be approved; however, New York State Liquor Authority reserves right to adopt its own interpretation of FAA regulations. The following legends and size of letters for labels have been approved by the director of the Bureau of Weights and Measures in the New York State Department of Agriculture and Markets:

Container Size	Legend of Contents	Minimum Size of Letters
7 oz.	7 fl. oz.	3/16"
8 oz.	½ pt.	1/9"
10 oz.	10 fl. oz.	3/16"
11 oz.	11 fl. oz.	3/16"
12 oz.	12 fl. oz.	1/9" or 3/16"
16 oz.	1 pint	1/9"
24 oz.	1 pt. 8 fl. oz.	1/9"
26 oz.	1 pt. 10 fl. oz.	3/16"
32 oz.	1 quart	1/9"
½ gal.	½ gal.	1/9"

Abbreviations such as oz. for ounce, qt, for quart, fl. for fluid, etc., may be used.

NORTH CAROLINA—(1) No; (2) No provisions; (3) Yes; (4) No label may advertise a higher al-

coholic content than 5% by weight. The label shall not contain any false or misleading statement, design or device.

NORTH DAKOTA—(1) No; (2) Accurate statement of alcoholic content required. Statement in terms of percentage by weight is the approved form; (3) No.

OHIO—(1) No; (2) 3.2% beer must be labeled "The alcoholic content of this package does not contain more than 3.2 per centum of alcohol by weight." Stronger beverages must be labeled "The alcoholic content of this package is in excess of 3.2 per centum by weight but not more than 7 per centum by weight"; (3) Two samples of labels must be sent by outstate shippers to Department of Liquor Control for approval. No shipment until approval obtained; (4) Besides the statement of alcoholic content in terms of weight there may not be any additional inconsistent percentage figures. All references on a label to percentage of alcoholic content must be in same size type or print. Name of manufacturer must appear on label.

OKLAHOMA—(1) No; (2) Statement of alcoholic content optional. Must not show or imply alcoholic content in excess of 3.2% by weight. Words such as "strong," "high proof" and the like prohibited; (3) Yes; (4) There must be a label stating trade name of the beverage and name and address of the manufacturer. The word "Oklahoma" in not less than 8 pt. type must appear on top of all crowns or lids of bottles and cans and upon label fixed to keg.

OREGON—(1) No; (2) All ma beverages exceeding 4% of a cohol by weight shall show conspicuous type upon the co tainer thereof the alcoholic co tent by weight within a tolera not to exceed 0.5 of 1%; (3 Label approval must be obtain from State Liquor Control.

PENNSYLVANIA—(1) No; (2 Not permitted; (3) No; (4) Na and address of manufacturer m be permanently affixed to the bot or other container or to cap or co or to a label securely affixed to t container.

RHODE ISLAND—(1) Yes; (2 No; (3) No.

SOUTH CAROLINA—(1) Yes; (2 No provisions; (3) No.

SOUTH DAKOTA—(1) Yes; (2 Bottles and cans of 3.2 beer m bear statement: "Not over 3.2 alcohol by weight." No statem of alcoholic content permitted bottles or cans containing over 3 and not over 6% of alcohol weight. Malt beverages over 6 alcohol by weight are classed distilled spirits. Kegs and bar of 3.2 beer must be closed wit white bung; over 3.2 and not o 6% with a red bung; other c ors or markings may be used distinguish between 3.2 and o 3.2 when notice is filed with rector of Licensing; (3) Sam of beverage together with l must be submitted to the Sec tary of Agriculture before be age may be sold in state.

TENNESSEE—(1) No; (2) provisions; (3) No.

TEXAS—(1) No—for bever over 4% by weight regulations similar to FAA; (2) Not p mitted—no malt beverage con

ing Requirements

4% or less alcohol by weight be labeled anything but er": (3) On both "beer" and alt liquor" label, approval re- ired. Must be obtained from ministrator; (4) Label must w name and address of manu- turer and name of distributor whom any special brand is nufactured, brand name and tents in liquid measure. Fur- r restrictions on words used.

—(1) Yes; (2) If crown car- statement of alcoholic con- of container, statement need be repeated on label. (3) No.

ONT—(1) No; (2) No provi- s; (3) Yes.

NIA—(1) Yes; (2) Not per- ed, FFA—Beer crowns and ps distinguish between 3.2 and nger beer; (3) FAA only.

INGTON—(1) No; (2) Max- m alcoholic content must be d in terms of weight and not me; (3) Labels must be sub- ed to Board for approval be- being used; (4) Labels must show nature of contents, name of manufacturer, place manufactured. Labels must show beverage is "beer," "ale," "stout" or "porter." No label shall be used which contains the name of the seller or purveyor in any manner, and no "proprietary" label shall be used nor shall any label be restricted to any one outlet or association of outlets.

WEST VIRGINIA—(1) No; (2) Not permitted; statement "not more than 3.2% alcohol by weight" required on tax-paid crown or lid; (3) Yes; (4) Labels on beer bottled by brewers other than the manufacturer must clearly indicate name of manufacturer.

WISCONSIN—(1) Yes; (2) Not permitted, FAA; (3) Sample label and statement of alcoholic content required; (4) Label must contain state registration number of manufacturer. Contents must be stated in fluid ounces. Name and address of manufacturer or bottler must also appear.

WYOMING—(1) No; (2) No provisions; (3) No.

N-ZYMO *CHILLPROOFING*

N-ZYMO *GLUCOSE OXIDASE*

SAFE — EFFICIENT — ECONOMICAL

TA-ZYME LABORATORIES, INCORPORATED

W. WASHINGTON BLVD. CHICAGO 6, ILL.

Say you saw it in MODERN BREWERY AGE.

ADVERTISING LAWS AND REGULATIONS

Pertaining to Fermented Malt Beverages

A Summary of State Laws and Regulations

Note: Reference to FAA relates to Federal Alcohol Administration Regulation as it applies to advertising only.

ALABAMA—*General Control:* FAA not adopted. Certain media only permitted. *Prohibited:* circulars; displays of product or packages; furnishing retailer or consumer novelties by brewers; exterior and window signs; furnishing retailers' signs by brewers. *Permitted:* billboards; magazine, newspaper and radio advertising. *Special Provisions:* Samples may not be given to licensees by brewers or wholesalers, but a salesman may purchase from a retailer and use bottle purchase to introduce line to licensees. No interior retailers' signs except price list.

ALASKA—No provisions.

ARIZONA—*General Control:* FAA not adopted. Limits on furnishing. *Prohibited:* Circulars. *Permitted:* billboards; display of products or packages; magazine, newspaper and radio advertising; necessary samples; furnishing retailer and consumer novelties; interior and window retailers' signs; exterior retailers' signs up to 864 square inches; furnishing retailers' tap signs. *Required:* retailers' tap signs. *Special Provisions:* $150 limitation and 364 square inches on exterior signs furnished retailers; $150 limitation and 630 square inches on window and interior signs furnished retailers by brewers. No advertisement may be obnoxious, gaudy or blatant. No signs using words "saloon," "bar," etc. No sign may be offered as inducement to exclude others.

ARKANSAS—*General Control:* FA not adopted. Advertising larg unrestricted. *Prohibited:* wh salers and brewers from red ing bottle caps for cash pri giving free trips to ball ga giving free beer with orders cash reimbursements; free s ples to wholesalers; salesmen fr carrying over 10 samples. *mitted:* billboards, except in areas; circulars; display of pr ucts or packages; magazine, n paper and radio advertising; f nishing retailer and consu novelties by brewers; exterior, terior and window retailers' sig furnishing all types retailers' s by brewers. *Optional:* retai tap signs.

CALIFORNIA — *General Cont* FAA not adopted. Advertising largely unrestricted. *Prohibi* advertising matter affixed to s windows; containers on sidew furnishing novelties and exte signs by brewers to retailers. *mitted:* billboards but limited to location; circulars; displa products or packages on int or in windows provided they not obstruct view; magaz newspaper and radio advertis furnishing consumer novelties rect (not through retailers o connection with a sale) by b ers; interior and window retai

ertising Laws and Regulations

gns; furnishing retailers' tap gns. *Required:* retailers' tap gns. *Special Provisions:* sam- es limited to one bottle or can pened on premises. Retailers' ex- rior signs limited to 720 square ches on-sale; off sale, any size. terior signs which are furnished brewers or wholesalers may not larger than 630 square inches if r use in or about on-sale pre- ses. Wholesalers may now set up splays advertising their own oducts in off-sale premises and y furnish up to $15 worth of corations, pictures and promo- nal material advertising their n products to each off-sale re- ler each year, as well as news- per ads, mats or engraved cks.

ORADO — *General Control:* A not adopted. Advertising gely unrestricted. *Prohibited:* nsees of 3.2 and strong beer y not be furnished any adver- ng materials except napkins, sters, menu sheets, menu cov- , placemats, calendars, serving rs, ash trays, change trays, ity trays, license holders, ps, mirrors, foam scrapers, tle and can openers and ma- als of similar nature; glasses, gs, paper cups, book matches, sic coolers and clocks shall not given but may be sold at cost; eptance by retailer from brewer ny financial assistance, equip- t, decoration, service or other g of value calculated to induce handling of the products of brewer. Beer stronger than Use by retailer of brewer's rior sign unless that beer is draught; sale of beer stronger than 3.2 at less than fair trade prices. *Permitted:* billboards, circulars, display of products or packages, magazine, newspaper and radio advertising, interior, window and exterior signs belonging to brewers. *Optional:* retailers' tap signs. *Special Provisions:* a sign at least 10 inches high is required on 3.2% premises stating: "Only 3.2% beer sold here." Denver city ordinance prohibits package stores from displaying price lists.

CONNECTICUT — *General Control:* FAA not adopted. Advertising strictly controlled. *Prohibited:* exterior illuminated retailers' brand signs; furnishing retailer and consumer novelties by brewers. *Permitted:* billboards; circulars; display of products or packages provided they do not obstruct clear view of interior or extend more than 42 inches above sidewalk or ground; magazine, newspaper and radio advertising; interior retailers' signs; furnishing retailers' interior, window, tap signs by brewers. *Required:* retailers' tap signs. *Special Provisions:* Retailers' window signs

Alfred W. Fritz
1114 Madison Street
EVANSTON, ILLINOIS
BREWERS SUPPLIES
Antiformin, Montanin
Asbestos & Filtermass
Beerstone Removers
Brushes & Handles
Bull Frog Metal Polish
Bungs, Corks & Pitch
Plastic Paint
Preheater Nozzles
Plastic Sponges
— AND OTHER SUPPLIES

[fol. 392]

must be at least 70 inches above sidewalk or ground. Furnishing of advertising material by one manufacturer or wholesaler limited to $50 per retailer per year. "Bar," "tavern," etc., or name of any beer or brewer cannot be advertised by outside electric or neon sign.

DELAWARE — *General Control:* FAA not adopted. Advertising strictly controlled. *Prohibited:* reference to price in advertising. *Permitted:* billboards except in dry areas; circulars; display of products or packages provided there is clear space 2 feet high across window 4½ feet from ground; magazine, newspaper and radio advertising; furnishing retailer novelties of nominal value by brewers; furnishing consumer novelties by brewers; retailers' exterior, interior and window signs; furnishing all type retailers' signs by brewers up to $200 per year per retailer covering signs. Tapping accessories may be sold at not less than cost with $5 limit per year.

DISTRICT OF COLUMBIA—*General Control:* All FAA regulations in force. Advertising strictly controlled. *Prohibited:* Advertising which is misleading or contains any such words as "high test," "full strength," "prewar strength" or the like; circulars. *Permitted:* billboards; magazine, newspaper and radio advertising; furnishing retailer novelties by brewers up to $10 in value; furnishing consumer novelties by brewers; all types of retailers' signs which may be furnished only up to $10 limit which amount includes furnishing of all materials; display of pro packages. *Required:* to tap signs showing name *Special Provisions:* No a ment on exterior of licens ises or visible from exte contain any reference to

FLORIDA—*General Contro* not adopted. Advertisin trolled. *Prohibited:* outsid signs on licensed premises of ground on which licens ises located; lighted brand window of licensed premis one such brand sign ad the product of any one turer. *Permitted:* Any typ vertising on interior of premises except as noted manufacturer or distrib give, lend, furnish or sel tailer any advertising ma tailer is authorized to di interior of licensed Manufacturers and dis have unrestricted (except to retail licensee allowed) tising privileges off licens ises or plot of ground o licensed premises are loc cluding billboards, circula zines, newspapers and r vertising. *Required:* Br draught beer sold by reta played on tap or spigot.

GEORGIA—*General Contro* not adopted. All advertisin to its publication, dist display or announcement radio or TV station sh been submitted to the St enue Commissioner, with detailing of how and wh material is to be used, a be approved by him for s *Prohibited:* Signs and which are visible from any school ground or play

ertising Laws and Regulations

ed principally by minors; advertising in a charitable publication, school magazine or school paper without consent of revenue commissioner; giving anything but advertising material; the operation of any illuminated or animated sign advertising between midnight Saturday and midnight Sunday; retailers' advertising prices. *Permitted:* billboards; circulars; displays of products or packages; magazine, newspaper and radio advertising; furnishing retailer and consumer novelties by brewers limited to standard brewing advertising material; retailer signs from brewers must be standard brewing advertising material. *Optional:* retailers' tap signs.

WAII—Regulations authorized by liquor commission of each county. *Prohibited*: The word "saloon" shall not be used in any advertisement to describe the liquor business or the licensed premises of any licensee. Licensees shall not cause obscene or immoral advertising matter to be distributed either on or from the premises. It shall be unlawful for any licensee to give any intoxicating beverage as a premium, gift or inducement to sell other merchandise. *Permitted*: Exterior signs and posters if not exceeding nine square feet in area. No more than one exterior sign containing liquor advertising shall be permitted for each licensed premise. Liquor advertising in windows not to exceed 12 inches in height. *Required*: Retailers tap signs.

HO—FAA not adopted. Signs regulated. *Prohibited:* brand signs on exteriors; on-premise advertising except illuminated signs as prescribed by law; furnishing retailer novelties by brewers or wholesalers; samples; furnishing exterior signs to retailers by brewers or wholesalers; advertisements by brewer designating name of retailer or location where beer is sold; interior retailers' signs; furnishing consumer novelties by brewers; display of products or packages in windows. *Permitted:* billboards; circulars; display of products or packages on interior; magazine, newspaper and radio advertising. *Optional:* retailers' tap signs. *Special Provisions:* one exterior sign permitted up to 1500 square inches. Brewers may furnish one illuminated sign only, $20 limit, for use in interior or window up to 240 square inches. Only two interior signs may be visible from exterior, each limited to 240 square inches and $20 value.

ILLINOIS—*General Control:* FAA adopted. *Prohibited:* Gifts or donations by licensees, except those which upon submission to Illinois Liquor Control Commission are deemed to be of inconsequential value. *Required:* Retailers' tap signs. *Special Provisions:* Manufacturer, brewer or wholesaler may furnish retailer in Chicago area with one exterior sign per year, not exceeding 20 square feet and costing not more than $125 exclusive of installation and maintenance, and interior signs measuring not more than 1400 square inches and costing a total of not more than $75 exclusive of installation in any one year. Supplier may paint windows for retailer in Chicago area once a year, at cost not exceeding $50. Outside of Chicago area, one outside sign, inside signs and

window painting may be furnished at a total cost not exceeding $100 in any one year. Inside and outside signs furnished by supplier may advertise only products of supplier. Window painting may include name of retail licensee and any ordinary advertising phrases. Manufacturer, brewer or wholesaler may furnish to retailers throughout state other advertising materials such as posters, placards, coasters, trays, etc., to the value of $25 in use and in place at any one time.

INDIANA — *General Control:* FAA not adopted. Advertising strictly regulated. *Prohibited:* Circulars; furnishing of decorations by brewers in connection with display of products or packages; furnishing retailer novelties by brewers; bar

spending samples; retai
terior and window brand
illuminated interior bra
furnishing retailers' exte
window signs by brewer
tisements referring to
content, potency or price
offering any kind of a p
of sound trucks. *Permit*
boards over 200 feet fro
church or school; display
ucts or packages if no
from exterior; magazine
paper advertising if no ill
of infants are used; rad
tising; exterior non-bra
retailers' non-illuminated
brand signs; furnishing
interior and tap signs by
Optional: retailers' tap s
cial provisions: No sign
given retailer by brewer
has been approved by co

IOWA—*General Control:*
adopted. Advertising larg
stricted. *Prohibited:* use
such as "saloon," "bar,"
privilege signs, and sig
tising the retailers' place
ness furnished by brewer
saler. *Permitted:* billboa
culars; display of pro
packages; magazine,
and radio advertising; f
all types retailers' signs b
advertising brand of beer
cluding retailers' tap sig
ples, which must be repo
tional: retailers' tap signs.

KANSAS — *General Cont*
not adopted. State has
laws and regulations gove
vertising of 3.2% and st
Prohibited: furnishing ex
tailers' signs by brewers f
beer; samples except by
(with respect to strong b
ples may not be furnished

...nsees); exterior or interior ...inted signs on strong beer; law ...ering strong beer prohibits fur...hing of anything of value by ...ewers or distributors; furnish...g of interior or exterior decora...ns except that 3.2% law permits ...ewer to furnish interior and win...w signs of $100 value or less in ...e aggregate in one year; strong ...er law forbids advertising on ...hicles, inside signs, "dummy" ...tles and billboards but 3.2% ...y does not. *Permitted:* circulars ... 3.2% beer only; display of ...oducts or packages of both 3.2% ...d strong beer; exterior, in...ior and window retailers' signs ... 3.2% beer only; strong beer ...e permits retailer to have only ...e sign on licensed premises ...ich contains only the license ...mber, name of the retail dealer ...d words "Retail Liquor Store" ...letters not exceeding four in...es in height and three inches ... width; furnishing consumer ...elties by brewers but not ...ough licensee; furnishing re...ers' tap signs by brewers. ...*cial provisions:* advertisements ...strong beer may not state price ...irected to public while similar ...ertising of 3.2% beer may ...e price; on strong beer, testi...nial advertising is prohibited ...is statement concerning or il...rations of women, children or ...ily scene, but these are per...ed on 3.2% beer; advertise...ts of strong beer cannot de...e product as beneficial and ...ot refer to Mother's Day, ...er's Day, Memorial Day, In...endence Day, Labor Day, ...nksgiving, Christmas or East...

er; no such restrictions on 3.2% beer. *Optional:* retailers' tap signs on 3.2% cereal malt beverages.

KENTUCKY — *General Control:* FAA not adopted. Advertising closely restricted. *Prohibited:* posters, decorations on the outside which bear a trademark associated with a particular brand; painting the interior of retail licensed premises under the guise of advertising; statements that are: disparaging of a competitor's product, obscene, concerned with family scenes, misleading in any manner, or intimate health building qualities and the like; mention of place where beverage is sold at retail; advertising novelties and specialties; promotion of any certain brand in a retail store; solicitation of consumer. *Permitted:* 20 square foot decoration as background for signs; signs pertaining to brands located upon the wall of the retailer. Wholesalers are permitted to advertise brands in printed form on materials such as calendars, athletic schedules, recipes, etc., which conform to other regulations. *Special Provisions:* Brewers may furnish signs etc. for use in windows and interiors as long as they have value only as advertisements. Brewer cannot pay for displaying advertisements.

LOUISIANA — *General Control:* FAA not adopted. No advertising restrictions. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising, furnishing retailer and consumer novelties by brewers; samples; all types of retailers' signs which may be furnished by brewers. *Optional:* retailers' tap signs.

MAINE — *General Control:* FAA adopted. Restricted by commission. *Prohibited:* no restaurant, tavern, hotel or club licensee shall advertise malt liquors by displaying any of same in containers in any window of the licensed premises. No picture or other form of representation of the state house shall be used or displayed for the advertising of alcoholic beverages. Advertising of alcoholic content also not allowed. *Permitted:* billboards when licensed by state highway commission and advertising approved by state liquor commission; circulars provided they do not contain name of retailer or distributor; display of products or packages by retail licensees with other merchandise, but window displays of malt liquor must be in equal proportion to other merchandise displayed in the same window; furnishing retailer novelties by brewers up to $25 per retailer per year; furnishing consumer novelties by brewers which may be distributed through retailers; radio; interior retailers' signs. *Required:* retailers' tap signs. *Special Provisions:* only one exterior retailers' sign allowed; may be furnished by brewer. Twenty Five per year limitation on all interior advertising furnished retailer by brewer. Wholesalers or brewers may furnish retailer with one inside electric sign of value not in excess of $50.00, including the $25 per year limitation on all interior advertising. Only one sign per window, not over 750 square inches. No reference to alcoholic content. All advertising matter must be authorized by co sion.

MARYLAND — *General Co* F.A.A. Regulations not ad but comptroller is authoris do so. *Permitted:* Billboards, culars, newspaper and radi vertising. Direct mailing to sumers by producers, whole and retailers, provided such vertising is general in natur does not incur direct solicit Direct distribution to cons of advertising pieces of no value, such as lipstick tissues rings, booklets, recipe cards, affixed to package or indepe thereof; provided however, tributed through a retailer, retailer must not have on premises from a manufactur wholesaler any one piece of advertising material valued i cess of $5.00. Furnishing or ing exterior or interior sign play material, tap signs, or forms of advertisement, other utilitarian items, to retailer manufacturers or wholesalers vided the value of any one vertising piece on hand at one time is not in excess of $ *Requirements:* Samples or p graphs of advertising pieces, elties, gadgets, etc., with ex tion and plan of distributio requested for approval.

MASSACHUSETTS — F A adopted. "Reasonable" ad ing permitted. *Prohibited:* proper, objectionable and sive matter. *Permitted:* billb circulars if mailed; displ product or packages; ma newspaper and radio adver furnishing retailer novelt nominal value by brewers nishing consumer novelt

...sers; exterior, interior and ...dow retailers' signs; furnish... tap signs to retailers; sam... on request of licensee. *Re...ired:* retailers' tap signs. *Spe...l Provisions:* price lists may ... be displayed so as to be vis... from outside. Signs to re...ers may be only lent by brew..., cannot be given.

...IGAN—*General Control:* FAA ... adopted. Advertising strictly ...ulated. *Prohibited:* advertising ... alcoholic content; advertise...nts or cartons, containers, etc., ... refer to holy days; scenes ...icting decorated Christmas ..., reindeer, Santa Claus or gifts ... fireplace; furnishing retailer ...elties except for ordinary cal...ars which may not be given ...etailers to customers; furnish... consumer novelties; samples; ...rior retail brand signs; fur...ing exterior retailers' signs by ...ers; giving money or other ...able consideration to retailer ...advertising space; furnishing, ...g or installing displays of ... type in any retailer estab...ment. *Permitted:* billboards; ...lars but should be approved ... display of products or pack... by off-sale retailers provided ... are not visible from exterior; ...zine, newspaper, television ... radio advertising with no ...ion of price; interior non...inated retailers' signs up to ...8 inches which may be fur...d by brewers; furnishing re...' tap knobs by brewers up ... limit. *Required:* retailers' ... signs. *Special Provisions:* ...view into premises required. ...sale distributor may participate in advertising of a brand if such advertising is placed or arranged for by him and if it appears in a periodical circulated within his territory or is aired from a television or radio station located within his territory. However, such participation shall be only by written contract between wholesale distributor and manufacturer for a period not to exceed six months. Advertising in newspapers and periodicals limited to publications of regular periodic issue of not less than quarterly publication and enjoying second class mail privileges.

MINNESOTA — *General Control:* FAA not adopted. Over 3.2% beer advertising must be approved before publication. *Prohibited:* circulars for over 3.2% beer to consumers; statement of price in any beer advertisement. *Permitted:* billboards; circulars for 3.2% beer; display of products or packages; magazine, newspaper and radio advertising (see special provisions); furnishing retailer and consumer novelties by brewers; samples; furnishing outside signs at total cost not exceeding $100 and inside signs not exceeding $25 in any calendar year. *Optional:* retailers' tap signs. *Special Provisions:* In advertising beer over 3.2%, there must be no illustrations of women or children, no statements as to beneficial effect.

MISSISSIPPI — *General Control:* FAA not adopted. Advertising not restricted. *Prohibited:* samples to retailers. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and consumer novelties by brewers; samples to whole-

salers; exterior, interior and window retailers' signs; furnishing all type signs to retailers by brewers. *Optional:* retailers' tap signs. *Special Provisions:* "Tied house" restrictions forbid brewers and wholesalers to give fixtures to retailers but not advertising materials.

MISSOURI—*General Control:* FAA not adopted. Advertising restricted as to furnishing. *Prohibited:* Signs or other objects on or within windows which obstruct vision from exterior; displaying packages of over 3.2 beer in windows or in any manner where they may be viewed from exterior; signs visible from the exterior advertising prices or container sizes; loud speakers or public address systems, other than regular radio, to advertise beer; advertising by means of carrying or transporting signs on sidewalks, streets or highways; gifts of products to retailers. *Permitted:* billboards, circulars, magazine, newspaper and radio advertising; package displays of 3.2 beer in windows; furnishing window displays and painting windows of retail outlets up to total cost, including labor, of $50 per outlet in any calendar year; furnishing all types of signs to retailers except "privileged signs" (signs which bear retailer's name or refer to anything other than the brand advertised and its producer); specified advertising novelties, such as coasters, menu covers, bottle openers, etc., which bear advertising and which are primarily valuable as point-of-sale media, to a total cost not exceeding $25 per outlet in any calendar year; pensing equipment service draught beer only, including nishing and cleaning of coils furnishing or repairing specified dispensing equip *Optional:* retailer's tap signs. *cial Provisions:* Beer glasses, matches, pencils, bottle bags, forms and aprons bearing manufacturer's or wholes brand or name advertising ma sold to retail outlets at not than the selling price of the m facturer of the article.

MONTANA—*General Control:* adopted. Signs limited in tion. *Prohibited:* display of ucts or packages on exterior windows; samples unless signed to Board; exterior ers' brand signs. *Permitted:* boards, magazine, newspaper radio advertising; display of ucts or packages in interior; terior retailers' signs; furni interior and tap signs for ers by brewers; furnishing openers, can openers, and furnishing novelties not to e $15 in any calendar year; fu ing not more than two in illuminated or electric signs, not to exceed 300 square i and both not to exceed $ value. *Optional:* retailers' signs.

NEBRASKA — *General Co* FAA not adopted. *Prohi* decorations relating to disp products or packages furnish brewer, trade names, adver any brand of beer, on outs retail premises; furnishing terior brand signs. *Perm* billboards; circulars, ma newspaper and radio adver display of products or pac

ing Laws and Regulations

les; only one exterior sign
e exceed 600 square inches,
shed by retailer for own use;
shing interior signs, not ex-
ng 28 square feet, brand
not exceeding 300 square in-
and cost not exceeding $100
ar, to retailers by brewers or
esalers; cardboard self-sup-
ng display advertising signs
shed by supplier to retailer,
oved by commission. *Op-*
l: retailers' tap signs; fur-
ng of advertising novelties of
not over 10¢ each to re-
s for ultimate distribution to
mers. *Special Provisions:*
view into on-sale premises,
t restaurants, hotels or clubs,
not be obstructed.

NEVADA—*General Controls:* FAA not adopted. No advertising restrictions of any kind.

NEW HAMPSHIRE—*General Control:* FAA not adopted. Advertising through certain media only. *Prohibited:* billboards; circulars; floor, counter or window display; furnishing consumer novelties by brewers; exterior, interior and window retailers' signs. *Permitted:* radio advertising; approved interior point of sale advertising; samples by licensed shippers and wholesalers; furnishing retailers' tap signs by brewers. *Required:* retailers' tap signs. *Special Provisions:* furnishing retail novelties to retailers by brewers limited to foam scrapers, coasters and bottle openers which must be approved. All magazine and newspaper copy must be submitted to

UPERIOR'S FLO-MATIC SYSTEM

ORIGINAL AUTOMATIC PEERLESS TYPE TAPPING METHOD

Your Answer To Greater Draft Beer Profits...

THRU ACCEPTANCE

Automatic Plug-In — Free Flow
Automatic Shut Off When Uncoupled
Pre-Tapping of Kegs Made Possible

THRU MAINTENANCE

Proven performance, proven economy of operation — no leaks, no waste, easily repaired at point of use. A lifetime stainless steel rod combined with an immediately repairable head.

THRU LOW ORIGINAL COST

Your present outdated rods and taps can be also easily converted to this modern, simple, efficient system.

The Flo-Matic System was developed, tested, and advertised to accomplish many advantages.
Now, two years of field testing and experience have justified our confidence, even beyond our expectations.
The result — no repairs — no replacements

SUPERIOR PRODUCTS MFG. CO. 1826 Marshall St. N.E. Minneapolis 18, Minn.

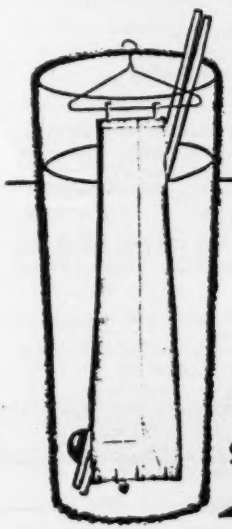
Say you saw it in MODERN BREWERY AGE.

Advertising Laws and Regulations

Commission for approval at least one week before publication. Radio advertising must be approved also. Must be only moderate statement of qualities distinguishing brand.

NEW JERSEY — *General Control:* FAA adopted. $100 limit on all furnishing. *Prohibited:* direct or indirect reference to retail price of any alcoholic malt beverage in any advertisement in newspapers, magazines, handbills, circulars or mailing pieces; display of products or packages on exterior; exterior retailers' brand signs; furnishing exterior retailers' signs by brewers. *Permitted:* billboards; circulars; magazine, newspaper and radio advertising (latter disapproved but permitted); furnishing retailers and consumers novelties by brewers after written approval is tained; samples, but only to sons to whom sales may be m interior and window retailers' which may be furnished by b ers up to $100 ($100 limit inc all other advertising matter a as signs); display of packages products in windows or interi furnishing retailers' tap sign brewers up to $1 each. *Requi* retailers' tap signs. *Special Pr sions:* within the $100 limit on all advertising which ma furnished to one retailer in year, advertising is not impede long as it is dignified, does not tain to gambling and does not pict athletes, doctors or perso similar occupations, or is nature tending to foster or courage intemperance or to in minors to purchase or cons alcoholic beverages.

HART *Coolster* AS COOL AND SATISFYING AS AN ICED DRINK ON A HOT SUMMER DAY



WASH AND WEAR DACRON TROUSERS are light in weight . . . has excellent crease retention and wrinkle resistance. Wash at night . . . hang to drip dry . . . wear the next day.

THE COOLSTER SHIRT . . . HART exclusive . . . keeps you cooler, neater all day long. Made with short sleeves and convertible-type sport collar. Vat dyed and sanforized for lasting fit.

A COMPLETE UNIFORM LINE FOR YOU

WRITE FOR FREE ILLUSTRATED BROCHURE

THE HART MFG. CO.
COLUMBUS 3, OHIO

HART UNION MADE

ising Laws and Regulations

MEXICO — *General Control:* A not adopted. *Permitted:* bill-rds; circulars; display of ducts or packages subject to 0 limitation as to furnishing by rers; magazine, newspaper radio advertising; furnishing sumer novelties by brewers; ishing retailer novelties up to ; samples; exterior, interior window retailers' signs. *Op-al:* retailers' tap signs.

YORK — *General Control:* A not adopted. Furnishing tly controlled. *Prohibited:* ishing retailers' exterior signs rewers except that such sign be erected on roof or the ex-r wall of a building housing licensed premises if the re-r is not the owner or the e of the entire building; ad-sing of alcoholic content. *nitted:* billboards; circulars pt by out-state brewers, unless hold N. Y. State beer whole-'s license; displays of prod-and packages subject to $25 ation in any calendar year on shing of window decorations; zine, newspaper and radio rtising; furnishing consumer ties by brewers; furnishing which have utility value to emise and off-premise li-es, as long as total value of ties and signs does not ex-$25 per year; furnishing in-, window and tap retailers by brewers; retailers' inter-nd window signs up to 270 e inches in on-sale premises ery licensees exempt from limitation). *Required:* re-' tap signs. *Special Provisions:* furnishing retailer novelties by brewers subject to definite limitations such as obtaining receipts for such material from all retail licensees. Permission must be obtained before interior or exterior signs may be furnished or displayed in retail establishments (permission not required for wholesaler establishments). Samples may be furnished retailers who do not carry a particular brand up to two containers of a size no larger than ordinarily required for proper sampling.

NORTH CAROLINA—*General Control:* FAA not adopted. *Prohibited:* Brand signs visible from the exterior. Brand names and prices in newspaper, radio and television advertising. *Permitted:* The display of one container of each brand of beer available for sale, located on inside only. The display of one Beer Permit number sign on outside premises not to exceed five inches in height. Each retailer is allowed to display one piece of non-illuminating, non-mechanical and non-wall-painted point of sale advertising which is not to exceed 500 square inches in area for each brand. The word "beer" is allowed in advertising in newspaper, radio and television. Under point of sale, a six-pack stand is allowed with brand name sign attached provided this point of sale conforms with and does not exceed 500 square inches as permitted under Regulation #17. *Special Provisions:* It is requested that all types of point of sale advertising be submitted to the Control Board. Beer and ale for sale on shelves is permitted as long as not visible from the outside. Items for customer pick-

up can be priced. Advertising other than brand names and lettering on the containers, cartons and cases is prohibited. Retail outlets are permitted one sign not to exceed five inches in front window giving price only.

NORTH DAKOTA — *General Control:* FAA not adopted. *Prohibited:* Furnishing retailer and consumer novelties by brewers; samples. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising; furnishing by brewer of outside retailers' sign not to exceed $100 exclusive of erection, installation and repair charges; furnishing by brewers of inside retailers' signs, miscellaneous advertising matter and other items not to exceed an aggregate of $25 in any calendar year per retailer. *Optional:* retailers' tap signs.

OHIO—*General Control:* FAA not adopted. Advertising strictly controlled. *Prohibited:* furnishing retailer or consumer novelties by brewers; exterior retailers' brand signs; furnishing retailers' exterior signs by brewers; installation of interior decorations and window trims by brewer or distributor on retailers premises; advertising retail price, except in retailers' premises. *Permitted:* billboards except on premises of permittees or near churches or schools; circulars but no consumer distribution by retailers; display of products or packages in interior and in windows; magazine, newspaper and radio advertising; not more than two illuminated signs, neither of which may exceed 324 square inches in all show windows of retail establishment sign may advertise only brand; no limit on number of illuminated or non-illuminated signs displayed in interior of retail premises. *Required:* retailers' tap signs. *Special Provisions:* Advertising may not encourage excessive use of alcoholic beverages. Illustrations of women or children discouraged and must be approved by Board of Liquor Control. There must be clear view into interior of premises.

OKLAHOMA — *General Control:* FAA not adopted. *Prohibited:* Lease, loan or sale to retailer of equipment or outdoor signs of substantial value. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising; furnishing retailer and consumer novelties by brewers; *Required:* retailers' tap signs. *Special Provisions:* No advertisement may suggest price or point of purchase of the product advertised.

OREGON—*General Control:* FAA not adopted. Advertising strictly prohibited as specifically provided. *Prohibited:* exterior display of products or packages; furnishing retailer or consumer novelties. *Permitted:* radio and television advertising except between 8 P.M. and midnight on Sunday; billboards in incorporated cities; interior display of products or packages, window displays; off-sale premises only; circulars may be furnished to licensees by brewers or wholesalers as these circulars are not permitted to be viewed by the public without approval by commission,

...rtising Laws and Regulations

...plaining proper and temperate ... of beer may be distributed by ...tailers, but not by direct mail; ...agazine and newspaper advertis... except with Sunday dateline; ...terior retailers' signs and ex...rior signs up to 630 square in...es; exterior signs limited to ...e; furnishing retailers' signs all ...pes by brewers or wholesalers ...ensed within state. *Required:* ...tailers' tap signs. *Special Pro...sions:* presence of beneficial ef...t may not be advertised. No ...ntest or premiums. No illustra...ns of children or family scenes ...th children. All advertising copy ...st be submitted to the liquor ...ntrol commission in duplicate ...d written approval obtained be...re releasing for use or distribu...n.

...NSYLVANIA — *General Con...l:* FAA not adopted. Adver...ing strictly regulated. *Prohib...d:* exterior brand signs. *Per...tted:* window and door signs ...h no limitation as to cost but ...h a total display area not ex...ding 300 square inches; bill...ards; circulars except to con...ers with retailers' name; mag...ne, newspaper and radio adver...ing; furnishing retailer novel...s by brewers provided they are ... only nominal value with only ...wers' name; furnishing con...er novelties by brewers; sam...s but only a few bottles to any ... person. *Required:* retailers' ... signs; all advertising and ad...tising novelties must be sub...ted to the Board and approval ...ained prior to distribution. ...cial *Provisions:* no one piece ...point of sale display advertis...ing may exceed $10, and no brewer, if he is advertising more than one product, may spend more than $20 in such signs. No price advertising which may be seen from exterior. Samples must be so marked.

RHODE ISLAND—*General Control:* FAA adopted. Advertising largely unrestricted. *Prohibited:* any mention of price in any advertising medium; display of illuminated signs on Sundays or Christmas. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising; furnishing retailer and consumer novelties by brewers; samples in reasonable amounts; all types retailers' signs which may be furnished by brewers, except that a sign visible from the outside shall not make reference to price. *Required:* retailers' tap signs.

SOUTH CAROLINA—*General Control:* FAA adopted. Advertising unrestricted. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising; furnishing retailer and consumer novelties by brewers; samples; all types retailers' signs which may be furnished by brewers. *Optional:* retailers' tap signs.

SOUTH DAKOTA — *General Control:* FAA not adopted. Advertising largely unrestricted. *Prohibited:* mention of price on over 3.2 beer or offer of bonus, premium, gift, etc, either directly or indirectly in newspapers, magazines, handbills, placards, signs, billboards or other media. *Permitted:* billboards, circulars; displays of products or packages; magazine, newspaper and radio

advertising; furnishing retailer and consumer novelties; samples. *Optional:* retailers' tap signs. *Special Provisions:* Posting of price on packages or package shelves of any retail liquor store shall not be construed as advertising. Malt beverages of 3.2%, or less, of alcohol by weight are not limited by the laws and regulations governing advertising.

TENNESSEE — *General Control:* FAA not adopted. Advertising unrestricted. *Permitted:* billboards; circulars; display of products or packages; magazine, newspaper and radio advertising; samples; furnishing by brewers of electrical, neon and other similar signs, and of advertising novelties. *Optional:* retailers' tap signs. *Prohibited:* Law prohibits brewer or wholesaler from furnishing any fixtures of any kind to retailers.

TEXAS—*General Control:* FAA not adopted. "Tied House" prevents some furnishing. *Prohibited:* billboards in dry localities or within 200 ft. of any licensee; reference to alcoholic content; anything disparaging to competitor; exterior brand signs; circulars; to pay or to make any allowance to any retail dealer for an advertising or distribution service. *Permitted:* billboards of not less than 180 sq. ft.; display of products or packages; magazine, newspaper and radio advertising; furnishing advertising novelties of nominal value to retailer by brewers; furnishing consumer novelties by brewers; samples; certain types of retailers' signs which may be furnished by brewers. *Required:* retailers' tap signs.

UTAH — *General Control:* adopted. Advertising strictly trolled. *Prohibited:* billb display of products or pa visible from exterior; furn retailer novelties by brewe advertising purposes; furn novelties to consumers by ers; samples; exterior re brand signs; furnishing e retailers' signs by brewers; trations of children or scenes; contests; referen holiday. *Permitted:* cir magazine and newspaper a ing and radio advertising; terior retailers' sign up to square inches; two retailer dow signs up to 750 square of $30 value each; interior ers' signs which may be fur by brewers provided such si not visible from exterior of ises; furnishing of one retail dow sign by brewer up square inches, $30 value; ing of retailers' tap signs by ers. *Optional:* retailers' tap which are not permitted visible from exterior of pr *Special Provisions:* abse harmful effect or presence o ficial effect may not be adv All advertising must be ap by Commission.

VERMONT—*General Contro* not adopted. *Prohibited* boards; exterior display o ucts or packages; windo plays; furnishing retailer ties by brewers; furnishi sumer novelties with excep bottle and can openers an screws, which dealer in tu distribute to customers; may carry name of manu and/or brand name; exter window retailers' signs; fu

terior, interior or window re-ilers' signs by brewers. *Per-itted:* interior display of prod-cts or packages; magazine, news-aper, radio and direct mail ad-ertising; furnishing retailers' tap igns by brewers. *Required:* re-ilers' tap signs. *Special Provis-ons:* Licensee may have one sign, 2 by 24 inches, with lettering ot over three inches high, desig-ating class of license he holds r such words as "beer," "ale," wine" or "liquor" but not both. igns must be approved by Liquor ontrol Board.

GINIA—*General Control:* FAA dopted. Advertising strictly reg-lated. *Prohibited:* circulars; ex-erior or window display of prod-cts or packages; furnishing re-ilers' novelties by brewers al-hough retailers may furnish their wn novelties with advertising; rand signs on retail premises; rnishing signs by brewers to holesalers only. *Permitted:* mag-zine and newspaper advertising rovided it is confined to mod-rate statement of qualities of rand only; radio-TV advertising; rnishing consumer novelties by rewers although they may not be istributed through retailers; sam-es but not more than one bottle a retailer; interior display of roducts or packages; use of one utdoor sign, poster, billboard or her similar media with letters ot to exceed five inches in eight containing not more than e following language: "A.B.C. icense No. ——," and "On Prem-es," "Off Premises" or "On and ff Premises," whichever is ap-plicable. *Required:* retailers' tap signs. *Special Provisions:* manufacturer or wholesaler permitted to furnish retailers with draught beer knobs to a value of $5 a year, tapping equipment to a value of $10 a year, bottle and can openers to a value of 5¢ each, and tapping equipment for use by purchasers of beer from retailers.

WASHINGTON — *General Control:* FAA not adopted. *Prohibited:* circulars, but cocktail recipes may be sent on written request; exterior or window display of products or packages; any display of keg or case in window; all novelties, including coasters, menu covers and calendars; samples; claims of health-giving properties; illustrations of juveniles, and of women depicted in a sensuous manner or unduly emphasized; illustrations of competitive sports; anything disparaging to competitors. *Permitted:* billboards, but locations limited; display of products or packages on interiors but all packages and containers must be filled; magazine and newspaper advertising except in school papers; in addition to signs with licensee's trade name, one single-faced sign not exceeding 630 square inches and with no dimension exceeding 42 inches may be placed on exterior, flat against exterior or on inside of window; lettering in such signs may not exceed six inches in height and words such as "bar", "saloon", may not be used; radio advertising; furnishing retailers' tap signs by brewers up to 40¢ each. *Special Provisions:* window retailers' signs limited to three, only two of which may be brand signs.

Floor displays limited to overall height, including price or display cards, of 84 inches; in aggregate they shouldn't occupy over 2% of sales floor area of licensees' premises with permissible aggregate minimum of 12 sq. ft. Brewers may furnish one illuminated sign per brand, limited to 630 square inches, no dimension to exceed 42 inches; retailer handling only one brand of draught beer may be furnished two illuminated brand signs advertising such beer or ale, each limited to 630 square inches and no one dimension to exceed 42 inches. Restrictions on dimensions apply also to non-illuminated signs for interior use. No retail licensee shall permit the use of any sound amplifying device, public address system or loud speaker for broadcasting music or entertainment to the outside of the licensed premises.

WEST VIRGINIA — *General Control:* FAA not adopted. Restrictions on brewers furnishing signs and other advertising. *Prohibited:* All exterior brand signs; all brand signs on windows or doors; all brand signs of electric or mechanical construction; all window displays furnishing retailers with novelties and specialties. *Permitted:* billboards; circulars; interior display of products or packages; magazine, newspaper and radio advertising; advertising novelties of nominal value to consumers; interior brand signs and similar matter, maximum of 4 per brand and not over 600 sq. in. *Required:* retailer's tap signs. *Special Provisions:* Brewers and distributors shall not furn directly or indirectly, furn and supplies to retail licens other than tap knobs, can bottle openers.

WISCONSIN — *General Cont* FAA adopted. *Prohibited:* us word "saloon." *Permitted:* boards; circulars; display of p ucts or packages; magazine, n paper and radio advertis furnishing miscellaneous adve ing material and other items to exceed $25.00 in calendar y furnishing consumer novelties brewers; samples; all types retailers' signs which may be nished by brewers not to ex $125.00 exclusive of erection, stallation and repair charges; nishing sanitary dispensing eq ment by brewers not to ex $25.00 per tap per calendar y *Required:* retailers' tap signs.

WYOMING—*General Control:* not adopted. Advertising restri *Prohibited:* exterior and win display of products or packa *Permitted:* billboards; circul interior display of products packages; magazine, newsp and radio advertising; sam but privilege must not be abu furnishing retailer and com novelties; all types of retai signs. *Optional:* retailers' tap s *Special Provisions:* each br limited to $200 per retailer furnishing retailers' signs (w out extra wording or privileg

CREDIT REGULATIONS

[Unregulated states omitted]

—(1) Between brewer and wholesaler;
(2) Between brewer (or wholesaler) and retailer.
[Note: Where number has been omitted indicates no regulations.]

ABAMA—(2) Cash.
ASKA—(1) and (2) Cash.
IZONA—(1) Credit; (2) Cash.
KANSAS—(2) Cash.
NNECTICUT — (1) and (2) hirty days.
LAWARE—(2) Not later than 2:00 noon on the Saturday after e week of delivery.
TRICT OF COLUMBIA—(2) ifteenth of month following pur- ase or delivery.
ORIDA—(2) Cash.
ORGIA—(2) Cash.
WAII—(1) and (2) Credit.
AHO—(2) Cash on or before de- very.
INOIS—(2) Fifteen days and 2) Cash.
DIANA—(1) and (2) Cash.
WA—(2) 30 days.
NSAS—(2) Cash.
NTUCKY—(1) and (2) Cash.
UISIANA—(2) Cash on or be- ore delivery.
INE—(1) Normal credit; (2) ash.
RYLAND—(2) Cash sales re- uired in 13 counties.
SSACHUSETTS — (2) Ninety ays.
CHIGAN—(1) and (2) Cash.
NNESOTA—(2) Cash.
SSISSIPPI—(2) Cash.
SSOURI—(2) 15th of month fol- owing delivery.
NTANA—(2) Within 7 days fter delivery.
BRASKA—(2) Thirty days.
NEW HAMPSHIRE — (1) Thirty days; (2) Ten days plus five days for report.
NEW JERSEY—(2) Thirty days.
NEW MEXICO—(2) Thirty days.
NEW YORK—(2) Tenth day of month following month of actual delivery, except for retail on and off-premises beer licensees in New York City, Nassau, Suffolk and Westchester counties, who are divided into 4 groups with a separate credit period of 28 consecutive days for each group.
NORTH CAROLINA—(2) Cash.
OHIO—(1) and (2) Cash.
OKLAHOMA—(2) Cash.
OREGON—(2) Cash on or before delivery.
PENNSYLVANIA — (1) and (2) Cash. Checks are not cash.
RHODE ISLAND—(2) Within 30 days of delivery.
SOUTH CAROLINA—(2) Cash.
TENNESSEE—(2) Cash.
TEXAS—(2) Cash.
VERMONT—(1) and (2) Cash.
VIRGINIA—(1) Cash between in-state brewer and wholesaler; no regulation between out-state brewer and in-state wholesaler; (2) Cash.
WASHINGTON—(2) Cash at time of delivery; cash prior to delivery may be paid if special permission requested and granted.
WEST VIRGINIA—(2) Cash.
WISCONSIN — (2) Fifteen days.
WYOMING—(2) Cash on delivery.

[fol. 408]

CONTAINER DEPOSIT REQUIREMENTS

[Only states having container deposit requirements are listed below.]

ALABAMA—50¢ per case of 24 bottles collected from retailer and consumer.

ARKANSAS—Wholesalers and retailers must collect minimum deposit of same amount as charged them by their respective suppliers.

CALIFORNIA—No set price but price of containers must be posted.

FLORIDA—a minimum cash deposit of 50¢ on each case of 24 bottles (domestic) collect from retailer and consumer; does not apply to non-returnable bottles on which there is no deposit.

GEORGIA — 50¢ minimum deposit for every 24 bottles and case, or 24 bottles, regardless of whether cases are wood or cardboard.

IDAHO — Wholesale prices within trade areas must be posted with state, including "any allowance granted for returned containers."

ILLINOIS—Minimum 50¢ per case of pints or smaller bottles and minimum 60¢ per case of quarts or half-gallon bottles.

INDIANA—Minimum 60¢ per container (24 12 ounce bottles or equivalent); 30¢ per container (twelve 12 ounce bottles or equivalent); collect from all permittees buying or selling and consumers.

KENTUCKY — Minimum 60¢ per case of twenty-four 12-ounce, twelve 32-ounce, or equivalent returnable bottles; collect from all wholesalers, distributors, retailers and consumers.

MARYLAND—Deposit representing usual trade price required on reusable cases and bottles.

MASSACHUSETTS—2¢ per 12 or 16-ounce bottle, 5¢ per quart bottle; 25¢ per case or rack; col from all wholesalers, distribut package stores and consumers.

MICHIGAN—All manufacturers wholesale distributors shall ma charge of 60¢ per case of twen four 12-ounce bottles, plus 5¢ f each six pack carrier and 6¢ f each 12 pack carrier, and a cha in like ratio for returnable co tainers and bottles of other si

NEW HAMPSHIRE—5¢ deposit f bottles containing 16 ounces more and 2¢ for bottles contain less than 16 ounces.

NEW JERSEY — Manufacturers wholesalers are required to l separately the amounts of depo upon returnable bottles and the tailer must obtain the deposit fr the consumer.

NEW YORK—75¢ per wood, st fibre or other reusable case co taining: (a) 24 bottles of 16 or less capacity; (b) 12 bottles more than 16 oz. but not mo than 32 oz. capacity; (c) 6 b tles of more than 32 oz. but n more than 64 oz. capacity. 5 per cardboard or other non-r usable carton containing abo quantities of reusable bott Empty reusable cases; 27¢ f cases constructed to hold 24 b tles of 16 oz. or less; 15¢ for ca to hold 12 bottles of over 16 and not more than 32 oz. or bottles of over 32 oz. and n over 64 oz. Bottles without ca 2¢ per 16 oz. bottle or smalle 5¢ per 17 through 32 oz. bott 10¢ per 33 through 64 oz. bot Collect from all wholesalers, r tailers and consumers.

...er Deposit Requirements

...H CAROLINA—Regulation on ...imum deposits rescinded.

...—Minimum charge, 75¢ per ... of 24 12-ounce bottles, per ... of 12 24-ounce bottles, per ... of 12 32-ounce bottles, per ... of six 64-ounce bottles, per ... of four 128-ounce bottles. ...imum charge, 50¢ per case of ...2-ounce bottles, per case of ... 32-ounce bottles. Minimum ...ge, 20¢ per case of six 12- ...e bottles, per case of three ...unce bottles. In less than case ... minimum charge, 2¢ for 12- ...e bottle, 4¢ for 24-ounce bot- ...nd 32-ounce bottle, 8¢ for ...unce bottle, 12¢ for 128-ounce ...e.

...ON—Under price posting there ... be set forth any allowances ...ted for returned containers.

...SYLVANIA—.75¢ per case. ...0 per case of 36 seven or eight ...e bottles. 2¢ per pint bottle or less; 4¢ per quart bottle, 8¢ per half gallon bottle; collect from all licensees and consumers.

SOUTH CAROLINA — Minimum charge of 60¢ per case of twenty-four 12-ounce bottles or twelve quart bottles and not less than the charge from the brewery to the wholesaler.

VERMONT—2¢ per bottle; collect from consumers.

VIRGINIA—On sales by licensed brewers and wholesalers to retailers the following must be collected; not less than 2¢ on 12 ounces or less, 4¢ on 13 ounces or more, 2¢ on paper containers, 27¢ on wooden containers, $4 on quarter barrels, $6 on half barrels.

WASHINGTON—Price posting rule requires statement of "empty container allowances."

WEST VIRGINIA—Minimum cash deposit of 50¢ per case, regardless of size of bottles therein, to be collected by distributors from retailers.

BENDER AND ASSOCIATES
677 SOUTH HIGH STREET — COLUMBUS 6, OHIO, U.S.A.
Telephone: Hickory 4-9841
A complete integrated brewery consulting and design service
...ressive Technology • The Economy of Tomorrow

LIMITATION OF CONTAINER SIZES

[Note: Only states having limitations of container sizes are listed below.

ALABAMA—No package beer container larger than 16 ounces.

ARIZONA—No package beer container smaller than 8 ounces for off-premise sale.

CALIFORNIA—Maximum size for package beer, 64 ounces; minimum for draught beer, 3½ gallons. No other limitations.

COLORADO—6, 7, 8, 11, 12 and 32 ounce for packaged beer. Sales in case lots limited to thirty-six 6 ounce, twenty-four or thirty-six 7 ounce, thirty-six or forty-eight 8 ounce, twenty-four 11 ounce, twelve, twenty-four or forty-eight 12 ounce and twelve 32 ounce. However, upon application and after proof shows sufficient necessity and consumer demand, containers of other capacities may be regarded as standard.

CONNECTICUT—12, 16, 32, 38 packages only for off-premise sales, unless imported.

DELAWARE — Minimum container size is 6 ounces.

DISTRICT OF COLUMBIA — No container smaller than 6.4 ounces.

GEORGIA—6, 7, 8, 9, 10, 12, 16, 24, 25.6 and 32 ounces only permissible containers for packaged beer.

HAWAII—Minimum case is 12 bottles and 216 ounces, except by special permission.

IDAHO—11, 12, 22, 24, 32 and 64 ounces only permissible containers for packaged beer unless permission obtained from Commissioner for other sizes.

INDIANA—Sales to permittees restricted to cases of twenty-four or forty-eight 12 ounce, twelve 32 ounce, four 64 ounce, six 64 o twelve 12 ounce or six 32 bottles or cans.

KANSAS—5, 6, 7, 8, 10, 11, 1 24, 25.6, 32 and 64 ounces, a as half and full barrels for 3.2% beer.

KENTUCKY—Customary size 12, 32 and 64 ounce; all sizes must bear a label stati letters ½" high, the liquid c thereof.

MARYLAND—Sizes limited to 16 and 32 ounce. Taxpaid c or lids provided for 12, 16 a ounce only. Any container 12 ounces requires 12-ounce or lid.

MICHIGAN—Tax crowns obta in state for following si ounces or less; 12 ounces o 16 ounces or less; 32 oun less; 64 ounces or less.

MINNESOTA—6, 7, 8, 10, 1 24, 25-3/5, 32 and 64 ounc permitted for packaged beer.

MISSOURI—No sale to permi transportation for sale exc cases of twelve 24 ounce, four 12 ounce, twelve 32 four 64 ounce, six 64 twelve 12 ounce, six 32 ou thirty-six 8 ounce bottles o Seven ounce also permitted.

NEBRASKA—12, 24, 32 a ounce containers for p beer. ½, ¼ and full barrel

NEW HAMPSHIRE—7, 8, 16, 25.6, 32 and 38.43 o domestic brands; 11½ an ounce in imported brand in case lots limited to 24, 40 in 7 ounce; 36 in 8 24 in 10 ounce, 12, 24 o

...itation of Container Sizes

...12 ounce; 12 or 24 in 16 ounce; ...12 in 32 ounce; 24 in 11½ ounce; ...12 in 21½ ounce; 12 in 25.6 ...nce; 12 in 38.43 ounce.

...W MEXICO—Sales in case lots ...imited to six half gallon, 12 qts., ...elve 24 ounce, twenty-four 12 ...nce, twenty-five 11 ounce (non-...omestic), twenty-five 8 ounce, ...irty-six 8 ounce, twenty-four 8 ...nce, twelve 12 ounce, twenty-...ur 11 ounce, eighteen 8 ounce, ...x 12 ounce, forty-eight 12 ounce ...r thirty-six 7 ounce. (Other ...es acceptable on filing of notice ...ith Division of Liquor Control.

...RTH CAROLINA—No crown or ...d provided for containers larger ...an 64 ounce.

...O—12, 24, 32, 64 and 128 ounce ...ntainers only for packaged beer. ...egulation does not apply to ale.

...LAHOMA—over 3.2: 8, 10, 11, ...2, 16, 24 and 25.6 ounces.

...EGON—Maximum size 32 ounces ...r packaged beer. All containers ...f this size or less for packaged ...er shall be approved by the ...mmission.

...NSYLVANIA—7, 8, 12, 16 and ...2 ounces only permissible sizes ...r bottled or canned beer.

...TH DAKOTA—8, 12, 24, 32 ...d 64 ounces only permissible ...es for bottled or canned beer.

...AS—12, 24 and 32 ounce con-...ers only for packaged malt ...verages under 4% by weight.

...MONT—Off-sale, no restriction; ...-sale, maximum 16 ounces.

...GINIA—Maximum capacity for ...kage beer, 32 ounces. Tax is ...ied on containers of 7 ounces or ...s and 12 ounces or less. Crowns ...ilable for 7, 12, 16 and 32 ...ces.

WASHINGTON—Twelve 11 ounce, twelve 12 ounce, twenty-four 11 ounce, twenty-four 12 ounce, twelve, twenty-four and forty-eight 16 ounce, twelve 32 ounce, twenty-four 32 ounce, forty-eight 11 ounce and forty-eight 12 ounce only f package beer. ¼, ½ and wh barrels.

WEST VIRGINIA—Crowns and l available for 7, 8, 12, 16 and ounces only.

PERMISSIBLE ALCOHOLIC CONTENT FOR FERMENTED MALT BEVERAGES

ALABAMA—Not to exceed 4% by weight or 5% by volume.

ALASKA—Minimum 1% by volume.

ARIZONA—No limit.

ARKANSAS—5% by weight; higher alcoholic content beer under liquor licenses.

CALIFORNIA—4% by weight for draught and bottled beer. No limit bottled ale, porter and stout may be sold by licensees other than on-sale beer only licensees.

COLORADO—No limit except 3.2% in dry territories.

CONNECTICUT—No limit.

DELAWARE—No limit.

DISTRICT OF COLUMBIA — No limit.

FLORIDA—No limit except 3.2% in dry territories.

GEORGIA—6% by volume.

HAWAII—No limit.

IDAHO—4% by weight; higher alcoholic content beer through state liquor stores.

ILLINOIS—No limit.

INDIANA—No limit.

IOWA—4% by weight; higher alcoholic content beer through state stores.

KANSAS—Beer shall contain more than 3.2% alcoholic content by weight. Cereal malt beverage shall not exceed 3.2% alcoholic content by weight.

KENTUCKY—No limit.

LOUISIANA — 6% by volu higher alcoholic content b through liquor licensees.

MAINE—No limit.

MARYLAND—No limit.

MASSACHUSETTS—12% weight.

MICHIGAN—No limit.

MINNESOTA — No limit ex 3.2% in dry territories.

MISSISSIPPI—4% by weight.

MISSOURI—3.2% through beer licensees; 5% by weight thro beer licensees under liquor l over 5% by weight through li licensees. Ale may be sold by beer licensees.

MONTANA—4% by weight; porter and stout containing than 4% of alcohol by w can only be purchased thr state stores.

NEBRASKA—No limit, optiona

NEVADA—No limit.

NEW HAMPSHIRE—6% by ume; higher alcoholic co through state stores.

NEW JERSEY—No limit.

NEW MEXICO—No limit.

NEW YORK—No limit.

NORTH CAROLINA — 5% by

NORTH DAKOTA—4% by we higher alcoholic content thr liquor licensees.

ible Alcoholic Content

-3.2% beer through beer
ees; 3.2% to 7% by weight
gh malt beverage licensees.

IOMA—3.2% by weight.
3.2 in liquor stores, package

N—4% by weight for beer;
or malt beverage other than

YLVANIA—No limit.
ISLAND—No limit.
CAROLINA — 5% by
t; higher alcoholic content
through liquor licensees with
ax penalties.
DAKOTA—6% by weight;
r alcoholic content beer
gh liquor licensees and taxed
tilled spirits.
SSEE—5% by weight.
—4% by weight; higher alcoholic content beer through liquor licensees with high tax penalties. (Over 4% by weight termed ale.)

UTAH—3.2% by weight. Over 3.2 in state stores.

VERMONT—6% by volume; higher alcoholic content beer through state stores.

VIRGINIA—No limit except 3.2% in dry territories.

WASHINGTON — 4% by weight; higher alcoholic content through state stores.

WEST VIRGINIA—Not more than 3.2% by weight; higher alcoholic content beer through state liquor stores.

WISCONSIN—5% by weight; higher alcoholic content through liquor licensees.

WYOMING—No limit.

STATE BEER TAX RATES

1) Tax rate.
2) Tax per 31-gallon barrel.
3) Tax per case of 24 12-ounce containers.

MA—(1) Two cents per 12-
or fraction; (2) $6.64; (3)
nts per case when packed in
nce containers or less.
A—(1) 25 cents per gallon;
7.75; (3) 56¼ cents.
NA—(1) 7½ cents a gallon;
2.32½; (3) 16⅞ cents.
SAS—(1) Up to 5% by
t, .1563 cents per gallon;
Up to 5% by weight, $5.00.
p to 5% by weight, 35.15625

RNIA—(1) $1.24 per bar-
2) Same; (3) 9 cents.
ADO—(1) 6 cents per gal-
2) $1.86; (3) 13½ cents.

CONNECTICUT—(1) $1.00 per barrel, 3-1/3 cents per gallon. (2) Same; (3) 7½ cents.

DELAWARE—(1) $2.00 per barrel; (2) Same, (3) $.1453 cents.

DISTRICT OF COLUMBIA — (1) $1.50 per barrel; (2) Same; (3) $.10888.

FLORIDA—(1) 24 cents per gallon; 3 cents per 16 ounces or fraction; (2) $7.44; (3) 72 cents.

GEORGIA—(1) $9.00 per barrel or 4 cents per 12 ounce; (2) $9.00; (3) 96 cents.

HAWAII—(1) 16% of wholesale price; (2) Same; (3) Same.

State Beer Tax Rates

IDAHO—(1) $3.10 per barrel; (2) Same; (3) 22½ cents.

ILLINOIS—(1) 6 cents per gallon; (2) $1.86; (3) 13½ cents.

INDIANA—(1) 8¾ cents per gallon; (2) $2.7125; (3) .196875.

IOWA—(1) $2.48 per barrel; (2) Same; (3) 18 cents.

KANSAS—(1) 10 cents per gallon; (2) $3.10; (3) 22 56/100 cents.

KENTUCKY — (1) $2.50; (2) Same; (3) 18 cents.

LOUISIANA—(1) $10.00 per barrel. Up to $1.50 local. (2) Same; (3) State tax—73 cents.

MAINE—(1) 16 cents per gallon: (2) $4.96; (3) 36 cents.

MARYLAND—(1) 3 cents per gallon; (2) 93 cents; (3) 6.75 cents.

MASSACHUSETTS—(1) $2 barrel; (2) Same; (3) 1 cents.

MICHIGAN—(1) $2.50 per (2) Same; (3) 18.144 cen

MINNESOTA — (1) 3.2% $1.60 per barrel—over 3.2 $3.20 per barrel; (2) San 3.2% beer, 11.613 cents 3.2% beer, 23.226 cents.

MISSISSIPPI—(1) 42.68 c gallon; (2) $13.64; (3) 9

MISSOURI—(1) 62 cents rel; (2) Same; (3) 4½ ce

MONTANA—(1) $1.50 per (2) Same; (3) 10.887 cen

NEBRASKA—(1) 4 cents lon; (2) $1.24; (3) 9 cent

NEVADA—(1) 3 cents per (2) 93 cents; (3) 6¾ cent

NEW HAMPSHIRE—(1) $ barrel; (2) Same; (3) 21.

COOKER ENZYMES®—Eliminates bitterness and strawy-f Increases adjunct yields. Cuts production costs. (Pater

NUPULON CHILLPROOF®—The Master Chillproof. Rated by performance. Produces sparkling and permanently beer.

ENZMOL®—Compensates for malt deficiencies. Shortens c sion. Increases malt yields. Improves fermentation.

★ **MORFOAM**—Puts uniform, long-lasting rich creamy and ous clinging foam on beer and ale. (Pat. Pend.)

★ **YEASTCEPTIC**—Suppresses growth and destroys gram-p and gram-negative bacteria in wort, beer and yeast. (Pat. Pend.)

★ **P. F. GUMS**—Replacement for gum arabic. Will not clog Foam producer. Odorless. Tasteless. Low Cost. (Pat. P

★ **MF FILTERMASS CLEANER**—Non-caustic, Non-irri White Free-Flowing Powder. Cleans, Deodorizes, Sa

NOX-AIR®—Eliminates Deleterious Oxygen without using icals.

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BREWERS SCIENTIFIC LABORATORIES®

LICENSED PROFESSIONAL ENGINEERS

P. O. Box 53 (Mailing Address) Rahway, N. J., U. S. A.

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Say you saw it in Modern Brewery Age.

Beer Tax Rates

JERSEY—(1) 3-1/3 cents per allon; (2) $1.03-1/3; (3) 7½ ents.

MEXICO—(1) $1.50 per bar-l; (2) Same; (3) 11 cents plus cent per case special tax for pport of Commission on Alco-lism.

YORK—(1) 3-1/3 cents per allon; (2) $1.03-1/3; (3) 7½ nts.

TH CAROLINA — (1) $10.50 r barrel; 1¾ cents per bottle of t more than 6 oz., 2.1 cents per ttle of exactly 7 oz. 3½ cents per ottle of more than 7 and not more an 12 oz.; 9-1/3¢ per 32-ounce ntainer; (2) $10.50; (3) 84¢.

TH DAKOTA—(1) 8 cents per allon on draught beer and 16 nts per gallon on packaged beer; additional tax of 1 cent a pint on packaged beer 5% alcohol by volume. (2) $2.48; (3) 36 cents, 27 cents over 4%.

OHIO—(1) 3.2% beer; $1.50 per barrel; one fourth cent per 6 ounce or fraction thereof; 3.2% to 7% by weight, $2.50 per barrel; three quarters cents per 6 ounce or fraction thereof; (2) 3.2% beer; $1.50; 3.2% to 7%, $2.50; (3) 3.2% beer, 12 cents; 3.2% to 7%, 36 cents.

OKLAHOMA—(1) $10.00 per barrel; (2) Same; (3) 72.581 cents.

OREGON—(1) $1.30 per barrel; (2) Same; (3) 9.438 cents.

PENNSYLVANIA — (1) $2.48 per barrel; one cent per 16 ounce or more than 8 ounce; two-thirds cent per 8 ounce or less; (2) $2.48; (3) 24 cents.

Star Safe-Tee Plastic Division of

PACIFIC HOP EXCHANGE, INC.

Collect
1-8137

Executive Offices
6527 GRATIOT AVENUE
DETROIT 7, MICHIGAN

State Beer Tax Rates

RHODE ISLAND—(1) $1.50 per barrel; (2) Same; (3) 11.25 cents.

SOUTH CAROLINA—(1) Up to 5% by weight, 45 cents per gallon or fractional quantity thereof; ½ cent per 7 ounces or fractional quantity thereof; over 5% requires alcoholic liquor tax rate; 3% sales tax applies to beer in addition to other taxes. (2) $13.95; (3) Up to 5%, $1.44.

SOUTH DAKOTA—(1) $2.00 per barrel on beer up to 6% by weight; on beer between 3.2% and 6% by weight which is sold through Class A (manufacturers) and Class B (wholesalers) liquor licensees, there is an additional tax of 10% of the gross receipts; (2) $2.00; (3) 14½ cents.

TENNESSEE—(1) $3.40 per barrel; (2) Same; (3) .2468 cents. Cities or counties may impose additional 17% tax on the wholesale price. Also subject to 3% state retail sales tax.

TEXAS—(1) 4% by weight, $ per barrel; over 4% by w 16½ cents per gallon; (2) U 4% by weight, $4.30; over 4% weight, $5.115; (3) Up to 4% weight, 31.2 cents; over 4% weight, 37.13 cents.

UTAH—(1) 3.2% beer; $1.1(barrel; over 3.2%, $4.00 per rel; (2) Same; (3) 3.2% be cents; over 3.2%, 29 cents.

VERMONT—(1) 20 cents per lon; (2) $6.20; (3) 45 cents.

VIRGINIA—(1) 1½ cents per age of not more than 7 ounc cents per package of more th ounces but not more tha ounces; for packages of more 12 ounces, tax at rate of mills per ounce; (2) $3.1(barrel; (3) 48 cents.

WASHINGTON—(1) $1.00 pe rel; (2) Same; (3) $7.258 c

WEST VIRGINIA—(1) $5.5(barrel; (2) Same; (3) 40

WISCONSIN—(1) $1.00 per b (2) Same; (3) 7.258 cents.

WYOMING—(1) 2 cents pe lon; (2) 62 cents; (3) 4½

SHIPPING REQUIREMENTS AFFECTING BREWE

Key—(1) To whom beer may be shipped;
(2) License or certificate of approval required?
(3) Bond required?
(4) How taxes are paid;
(5) Reports and records required?
(6) Salesman's license required?
(7) Special provisions.

ALABAMA — (1) Licensed wholesaler; (2) Agreement required, but no license; (3) $2,000 bond for out-state brewer to purchase tax crowns; (4) Crowns affixed outside state. Beer shipped to wholesaler for resale to military reservations must be Alabama tax unpaid as no refund can be made for the state tax; (5) Monthl

ALASKA — (1) Licensees; Wholesalers license required mum fee $100; (3) $25,00(required; (4) Stamps, cro lids in denominations t amount of the tax shall be to all containers. (5) Mont port required.

pping Requirements

IZONA — (1) Licensed whole-ler; (2) No; (3) Not less than 2,000 bond required of whole-ler to insure payment of tax due; o bond required of brewer ship-ing into state; (4) By instate holesaler by reports; (5) Copies f all invoices required from brew-s and wholesalers; (6) Registra-on fee for salesman or solicitor f wholesaler or brewer within tate is $1; of wholesaler or brew-outside state, $10.

KANSAS—(1) Licensed whole-ler; (2) No; (3) Yes; (4) By state wholesaler by reports; (5) Wholesaler must file report by 15th f month following month in hich he acquired possession of or tle to the beer; (6) No.

LIFORNIA — (1) Licensed im-orters; (2) Certificate of com-liance required; (3) No, unless hipper holds importer's license in alifornia; (4) By instate licensee; 5) Yes — reports required by 5th of month on shipments of receding month; (6) Out state rewers must have wholesalers li-nse at $56 fee.

LORADO—(1) Licensed whole-ler; (2) Wholesaler license of 00 for over 3.2% beer, $100 for der 3.2% beer, total $600; (3) iscretionary with State Liquor epartment and Department of evenue; (4) By in-state brewers d wholesalers by report due 15th month; (5) Copy of invoice st be mailed on day of ship-nt; also monthly report; (6) ly wholesaler licensees may rcit in state; (7) All importa-ns must be property of state holesaler when they cross state e. No such licensee shall sell, offer or expose for sale or distribute within the state any fermented malt beverages in bottles or cans of less than thirty-three (33) ounces capacity unless said containers, or a label attached thereto, shall carry thereon, in clear legible and indelible print a statement which clearly indicates that the beverage therein contains not more than 3.2% alcohol by weight.

CONNECTICUT — (1) Licensed wholesalers and brewers if Connecticut brewer also has Connecticut wholesaler beer permit; (2) Yes. Out-of-state shipper's permit necessary; (3) Yes; by tax commissioner; (4) Instate licensee by reports; (5) No; (6) Salesman must be registered by his out-of-state shipper employer with the Liquor Control Commission; (7) Out-of-state shipper's permit allows representative thereof to solicit Connecticut manufacturer and Connecticut wholesaler only. May not solicit retail trade unless out-of-state shipper has a Connecticut wholesaler permit.

DELAWARE — (1) Commission or Delaware importer; (2) No; (3) Surety bond required by wholesaler; (4) by purchaser on or before the 10th of the month following shipment of beer to the importer. (5) Weekly reports showing daily shipments; (6) Yes, as representative of importer to contact retailers; (7) Transporter must carry way bill and each case or keg carry stamp.

DISTRICT OF COLUMBIA — (1) Licensed wholesalers or retailer holding permit to import brand not obtainable in District; (2) No; (3) No; (4) By District of Col-

Shipping Requirements

umbia licensee on or before 15th of each month on sales of preceding month; (5) District licensees must furnish statement by 10th of each month showing amount of beer sold during preceding month; (6) $100.

FLORIDA—(1) Licensed manufacturers, distributors; (2) No; (3) No; (4) By state licensees by inventory reports; (5) Yes; (6) No; (7) The word "Florida" in eight-point type must be on crowns or can lids, as well as the manufacturer's name, trademark or insignia. Malt beverage manufacturers must require crown or can lid manufacturers to notify Beverage Director number of crowns or can lids manufactured and delivered to such brewer and bottler.

GEORGIA — (1) Licensed br or wholesalers; (2) Regist with State Revenue Commis and approval of brand, labe coholic content by volume, names of Georgia wholesale whom shipments are made sary before any shipments c made into state. (3) Br bond: $5,000. Wholesaler quired to post $1,000 "p mance bond"; retailers re to post $250 surety bond; By out-state shipper by a crowns, lids or stamps on On military 3.2% beer no (5) Monthly reports by te each month; (6) No.

HAWAII—(1) Licensed whol (2) No; (3) No provision Monthly reports; (5) No sions; (6) Agents licens $180.00.

HORST HOPS
OVER 60 YEARS

HORST GROWN NATURAL AIR DRIED HOPS WILL GIVE YOU HIGHEST QUALITY AND CONSISTENT UNIFORMITY BALE TO BALE AND YEAR TO YEAR.

E. CLEMENS HORST CO.
SAN FRANCISCO — 520 Montgomery St.
NEW YORK — 149 Broadway
CHICAGO — 208 South LaSalle St.

Say you saw it in MODERN BREWERY AGE.

...ying Requirements

...AHO—(1) Licensed brewers or ...holesalers; (2) Certificate of ap...roval; no fee; (3) Yes, $10,-...00 bond; (4) By affixing stamps ...o keg, case or carton; (5) Re...orts by 15th of month on sales ...f preceding month; (6) Yes, ...at no fee prescribed.

...LINOIS—(1) Licensed manufac...rers and importing distributors; ...2) No; (3) Importing distribu...r must file $5,000 bond; (4) ...y in-state licensee by stamps; ...onthly reports; (5) Reports by ...fteenth of month; (6) No.

...DIANA—(1) Licensed wholesal...rs. Beer must be absolute prop...rty of Indiana wholesaler when ...t enters state. Transporter must ...ave bill of lading; suppliers must ...ave active resident agent; (2) No, ...at out-state brewer must register to buy stamps; (3) No; (4) By out-state brewer by stamps; (5) Monthly reports from out-state brewers and Indiana wholesalers; Indiana brewers report bi-monthly; (6) Yes, fee $5.00. Issued to residents.

IOWA—(1) Licensed wholesalers; (2) No; (3) No; (4) By in-state licensed wholesaler by reports; (5) No; (6) No.

KANSAS—(1) Licensed wholesalers only; (2) No, except a brewer shipping taxpaid 3.2% cereal malt beverages shall have brewer's agreement with the Director of Revenue and furnish bond; (3) Bonds required for both 3.2 beer and over 3.2. Two bonds required, the amounts set at $1,000 each; (4) By stamps affixed by Kansas wholesalers, or by tax paid lids, crowns or tax-paid labels by brewer; (5) Out-state brewers required

Williamson's
Quality By the Barrel
INTERNATIONALLY FAMOUS WILLIAMSON'S SINCE 1865
PORTERINE
MALT COLORING
WUERZBURGER STYLE MALT CARAMEL
BROWN STOUT CARAMEL
STANDARD BEER COLORING
BISULPHITE OF LIME
Samples On Request
D. D. WILLIAMSON & CO., INC.
5-39 FORTY-SIXTH ROAD, LONG ISLAND CITY, N. Y.

Shipping Requirements

to furnish copy of invoices in all cases; (6) Permit required if salesman handles beer stronger than 3.2% alcohol by weight. Fee $2.00.

KENTUCKY — (1) Licensed distributors; (2) Must file out-state brewers contract which binds shipper to obey law and regulations, to report, to purchase stamps only from department of revenue, to appoint agent in Kentucky, etc.; (3) Two bonds required to be filed with contract, $1,000 each; (4) Crowns and lids, barrel stamps affixed by brewers; (5) Required by the fifteenth of each month; (6) No.

LOUISIANA — (1) Wholesale dealers; (2) No; (3) No; (4) By state dealer by reports; (5) Shipper must furnish or mail copy of invoice to Department of Revenue; (6) Salesmen of beer over 6% need license fee $1.00; (7) Transporter required to have invoice showing details of shipment, and transportation must be effected by common carrier operating under the I.C.C. or by a Louisiana wholesaler dealer's personally owned vehicle, with special permit on each load moving into state.

MAINE—(1) Wholesale licensees; (2) Certificate of approval; fee $100. No shipment may be made until certificate or confirmation has been received from Commission that tax has been paid. Shipment must be accompanied by invoice; (3) No; (4) By in-state licensee before shipment may be made; (5) Must send commission copy of every invoice; also report by tenth of each month all sales and deliveries to wholesalers during preceding month; (6) No.

MARYLAND — (1) Manufact and wholesalers licensed to port; (2) Permit required of resident dealers, fee $50; (3) (4) Taxpaid stamps or crown affixed out-state; (5) Yes; No, but discretionary; (7) state shipper sends certified to purchase stamps or o crown release. In-state brewer tax by return method and fu bond.

MASSACHUSETTS — (1) Lic wholesalers; (2) Out-of-state pers required to secure Certi of Compliance; fee not over (3) No; (4) By in-state lic by reports; (5) As require commission; (6) For solic selling agent's license must b cured at $300 fee. These are to Massachusetts residents o porations and to foreign co tions authorized to do busin Massachusetts through State of Corporations and Taxatio addition, salesmen's permits if more than one person is use required at fee of $10; (7) ly advance posting of pric quired.

MICHIGAN — (1) Licensed salers; (2) Seller's contra cense, $100 fee; (3) $1,000 By out-state brewer by stam keg beer and by taxpaid on bottled beer; (5) Must before 10th day of foll month, listing on form N each shipment to wholesaler must report on form No summary of crowns and s (6) Must be registered at $3.00 every three years.

MINNESOTA — (1) Licensed nesota wholesalers; (2) Ye balance required; (3) Yes, b $1,000 to $5,000 may be re

ping Requirements

) Monthly on basis of monthly ports: (5) Report due by 15th of nth; (6) Salesmen of 3.2% beer quire no license; over 3.2% beer ense is $1.00.

SSISSIPPI—(1) Licensed whole- ers or distributors; (2) Yes, reement must be signed; (3) 000 bond required of breweries ipping taxpaid beer into state.) Taxpaid crowns or lids must affixed by out-state brewers on tled or canned beer; tax stamps ixed to barrels by distributors;) Report on or before tenth of nth of all sales and deliveries ring preceding month and copies invoices mailed tax commission shipments are made; (6) No;) To transport beer into state, tributor must first obtain per- from state tax commission.

SOURI — (1) Licensed whole- ers; (2) License to sell to lesalers, fee $50; (3) $2,000 d required for all types of li- ses; (4) Out-state and in-state wers must purchase and affix mps before beer leaves brew- ; (5) Out-state and in-state wers and wholesalers must re- t shipments and receipts of r by 15th of following month;) Same as license to sell.

TANA — (1) Licensed whole- ers; (2) No; (3) No; (4) By tate wholesalers and brewers report; (5) Out-state brewers t report shipments made into e; (6) No.

RASKA — (1) Licensed manu- turers or distributors; (2) Yes, $25; (3) Yes, minimum 000, maximum $100,000; (4) ut-state shippers and domestic breweries; (5) Monthly report; (6) No.

NEVADA — (1) Licensed importers only; (2) Certificate of compliance required, renewable annually, no fee; (3) No for out-state brewer, but importer is required to furnish surety bond; (4) By licensed importer; (5) Holders of certificates of compliance are required to report by 10th of following month all shipments into state; (6) No, but samples must be imported by licensed importer and tax paid thereon; (7) Shipments must be made by common or contract carrier regularly operating as such, unless special permit is secured for each shipment.

NEW HAMPSHIRE — (1) Licensed wholesalers; (2) Certificate of approval, fee $500; (3) Commission may require bond in such amount as it determines; (4) By wholesaler on all beverages sold by him to retailers for the previous month. with payment made by the tenth day of the month; (5) Holder of certificate of approval must submit, by the tenth of each month, a schedule showing number of units, size of same and brands of all malt beverages shipped to a wholesaler the preceding month; (6) $5.00; (7) Besides certificate of approval, shippers must be registered with state board of health at annual fee of $10.

NEW JERSEY—(1) Licensed brewers and wholesalers; (2) No, unless orders solicited within state; (3) Yes, by licensed manufacturer or wholesaler within the state; (4) By in-state licensee at time of filing reports; (5) Yes; (6) No orders may be taken in state except by licensed solicitors who must be agents of licensed manu-

Shipping Requirements

facturers or wholesalers. Wholesalers fee, $900. Bonds required. Solicitor's fee $10.00.

NEW MEXICO—(1) Licensed brewers or wholesalers; (2) Non-resident license; fee $100; (3) $1,000; (4) By in-state licensee by stamps; (5) Must mail to division one copy of invoices of each shipment and copy of bill of lading; (6) Registration required, fee $2.00; (7) Shipments from out-state to state wholesaler must be to places covered by the wholesale license.

NEW YORK—(1) Licensed brewers and wholesalers; (2) No, unless orders solicited within state; (3) No; (4) by in-state licensee at time of filing reports; (5) Monthly information report must be filed with the tax department showing total gallons shipped to each customer in the state; (6) No orders may be solicited or taken except by licensed brewers or wholesalers or licensed solicitors employed by them. Solicitor's fee, $10; driver-solicitor's permit fee, $20; (7) To solicit or take orders in state, out-state brewers must have state wholesaler license, fee $500, and have place of business in state. Out-of-state brewer or saler may negotiate with i wholesaler for establishme agency for sale of his prod the state. Fee of negotiation mit, $100 annually, or $10 single transaction.

NORTH CAROLINA—(1) Li wholesalers and bottlers; (2) state brewer must get permi $150; (3) $2,000 bond r required; (4) By out-state s through taxpaid crowns or l bottled or canned beer an paid stamps on draught bee Commissioner of Revenue h thority to require regular cial reports; (6) Yes, annu $12.50; (7) Out-state brewe put permit number on eve voice. Highway trucks mus certificate to transport be fee; also must carry invoic ering shipment. Brewers, making delivery to distribu tax-free beer destined for n consumption, must affix on each carton or other conta label with letters not les two inches in height reading military use."

NORTH DAKOTA—(1) L wholesalers; (2) No; (3 (4) By in-state licensee; (5 (6) No; (7) Sample of bee

CENTRAL GRAIN and MALTING COMPAN

Piqua, Ohio

Manufacturers of Quality Malts

...ping Requirements

...e sent to food commissioner at ...nual fee of $50 per brand.

...0 — (1) Licensed wholesalers, ...ilroad licensees and common car...ers; (2) No; (3) Liability pol...y required of out-state brewers ...nsporting beer in own trucks; ...1) Technically, tax is paid by ...io distributor; actually, in ...ctice by out-state shipper by ...owns, lids or stamps for pack...ed beer and stamps for draught ...er; (5) Yes; (6) Registration ...quired; no fee prescribed; (7) ...er may be imported only on ...ritten consent of department of ...quor control.

...AHOMA—(1) Licensed whole...lers, also to retailers who have ...alified as taxpayers; (2) $500 ...rense fee required if brewery ...nsacts business within state; ...o $250 fee required for whole...le license if sales are made ...hin state to retailers direct; ...) No, but if licensed as whole...er must have bond ranging be...een $1,000 and $25,000, de...ding upon volume of business; ...) Wholesalers pay the tax be...re the tenth of the month for ...beverages sold or removed for ...le or consumption the preceding ...nth; (5) Monthly reports by tenth of month; (6) No; (7) If out-of-state shipper operates under a wholesale license he is required to file monthly reports and remit tax. If he does not have a wholesale license, the tax is paid by the first licensed wholesaler or retailer to sell the beverage in the state. Taxes paid at time of filing report.

OREGON—(1) Licensed wholesalers; (2) Yes, at fee of $50; (3) Yes, but only for wholesalers; (4) By in-state licensee; (5) All breweries shipping into the state must submit to the commission copies of invoices in duplicate covering all such shipments; brewers required to post prices to wholesalers with the Commission; (6) Representatives of brewer or wholesaler must have salesman's license to sell or solicit malt beverages, fee $5, except drivers and driver-salesmen. (7) Beer may be imported only by state licensee (either brewer or wholesaler) so that shipment must be property of state licensee and under his control when it enters state.

PENNSYLVANIA — (1) Licensed importing distributor; (2) No; (3) No, unless shipper is required to have a transporter for hire license; (4) By out-state brewer by crowns or stamps for packaged

J. S. HERIG & COMPANY

•

BREWERS MACHINERY AND EQUIPMENT
BREWHOUSE AND BOTTLING EQUIPMENT
TANKS, PUMPS, FILTERS, COMPRESSORS, ETC.

•

...9 Parkside Drive, Lakewood 7, Ohio Phone ACademy 6-8810

Say you saw it in MODERN BREWERY AGE.

Shipping Requirements

beer and stamps for draught beer; (5) Yes, Form RDA-65, 10th of each month; (6) No; (7) If out-state brewer ships in own or hired trucks, transporter-for-hire permit required; fee $50.00 for any number of trucks, plus filing fee of $10.00 and a vehicle identification card fee of $1.00 for each truck licensed.

RHODE ISLAND—(1) To wholesaler licensees only but order must be forwarded through Division of Liquor Control Administrator; (2) Certificate of compliance, fee $10.00 per brand; (3) No; (4) By in-state licensee; (5) Duplicate copy of invoice of every shipment must be mailed to department day shipment is made; (6) Yes; (7) Sales to retailers may be made only by holder of wholesaler's licenses.

SOUTH CAROLINA—(1) To licensed wholesalers only; (2) No; (3) No; (4) Responsibility for tax payment rests entirely with in-state wholesaler. Out-state brewer may affix stamps as accommodation to in-state wholesaler; (5) Monthly reports; (6) No.

SOUTH DAKOTA — (1) Lic wholesalers; (2) No; (3) (4) by in-state licensee by m ly report due 15th of follo month; (5) Monthly report quired of out-of-state brewer None for 3.2% beer. Salesm intoxicating liquor other high point beer required licensed at $25 and $1,000 (7) Suitable sample incl label must be submitted to chemist with annual fee o before malt beverages ma sold in state.

TENNESSEE—(1) Licensed salers who have privilege porting. Also to distribute out-state brewer is "domesti in state; (2) $40.00 registr Out-state brewer may "do cate" by filing charter with tary of State and appointm resident agent at fee of $30 pay brewer's state privilege t fee for which is $300 or $1 pending on population o county or city in which the lege is exercised. Municipali the state are also authorized

BREWER'S AIDS OF PROVEN MERIT

FORMULA C — Chillproofing and Stabilizer

FILTERWASH — Cleaning and Sterilizing Agent

ESTABLISHED 1936

FERMENTATION LABORATORIES
INCORPORATED
4003-4005 Westminster Pl., St. Louis 8, Mo.

CONSULTANTS ANALYSTS WRITE FOR INFORMATION

FERMENTIN — Yeast Supplement
FL67 — Modern Cleaning Concentrate
WORT-KLAR — Wort Clarifier

Say you saw it in MODERN BREWERY AGE

...ping Requirements

...like privilege tax. Wholesalers ...ho represent a brewer who has ...aid the brewer's privilege tax are ...rmitted to pay only one-fourth of ...e privilege tax levied on whole...lers; (3) No, but if brewer "do...sticates" he must give bond ...ed on twice amount of average ...nthly taxes; wholesalers require ...nd; (4) By out-state shipper at ...e of filing report each month; ...5) Reports required by tenth of ...ch month: (6) No; (7) Certifi...te of registration at fee of $10 ...r retailers, $20 for wholesalers ...d $10 for brewers, must be ob...ined before any storage, sale or ...tribution is made inside state. ...holesaler must maintain a whole...le price list, and file same with ...e Department and with the tax ...llecting official of each county ...d municipality wherein he makes ...holesale sales. Notice of any ...nge in such price list shall be ...livered to the Department and ...e tax collection official of each ...unty and municipality where ...es are made.

...AS — (1) Licensed importing ...anufacturers and distributors; ...) Yes, label approval certificate ...quired; (3) No; (4) Respon...ility of tax payment rests with ...holesaler of imported beer and ...ch brewer operating in Texas. ...es due on 15th day of month ...llowing month in which beer ...s imported or sold; (5) Month...reports of sales to state deal...; (6) Fee, $5.00; (7) Out-state ...ippers must file with secretary of ...te name and address of agent ...Texas on whom service may be ...de. No shipments on consign...nt.

UTAH—(1) Licensed brewers and wholesalers. However, beer over 3.2% by weight sold only to Utah Liquor Control Commission or to U. S. military installations in Utah and must be shipped direct from brewer; (2) Certificate of approval, annual fee $25.00; (3) Bond required in sum of not less than $10,000 for Utah brewers and $5,000 for wholesalers; (4) By monthly report; (5) Monthly report due on 15th of month showing beer imported or manufactured during preceding month; (6) No; (7) To obtain certificate of approval, brewer must agree in writing to report details of all state sales, to comply with law and regulations.

VERMONT—(1) Licensed wholesalers; (2) Certificate of approval, fee $1,100; (3) No; (4) By in-state wholesaler at time of filing reports; (5) Monthly reports required by twentieth of month; (6) $5.00; (7) There is a provision in state law for a certificate of doing business which involves payment of tax on capital stock. This is required if sales are made within state. To avoid this, salesmen of holders of certificates of approval may take orders in state subject to approval at out-state brewery.

VIRGINIA—(1) To any licensee. However, retailer is required to purchase beer from persons licensed to sell same in state; (2) No; (3) No; (4) By out-state shipper by crowns or lids on packaged beer and stamps on draught beer; (5) Monthly report by tenth of month; (6) Annual $1.00 fee for salesman representing brewer or wholesaler licensed in Virginia, $50.00 registration fee

Shipping Requirements

for salesman representing out-state brewer or wholesaler, prorated quarterly from July 1; (7) Transporters other than state licensees must file $1,000 bond. Evidence of payment of bond and memorandum of shipment showing route to be travelled must accompany each shipment. All beer, ale and stout shipped into state must be marked as not containing an excess of 3.2 alcohol by weight.

WASHINGTON — (1) To licensed beer importers; (2) Certificate of approval, fee $50; (3) Surety bond of $2,500 minimum; (4) At time of filing monthly reports; (5) Reports due tenth of month covering sales of preceding month; (6) Yes; all agents and salesmen must be licensed through state wholesaler or beer importer; fee, $2.00 per year; (7) To obtain certificate of approval, out-state brewer must agree to report each month, to comply with law and regulation.

WEST VIRGINIA — (1) Licensed distributor; (2) Yes; (3) Bond of not less than $5,000 nor more than $10,000; (4) By tax crown (5) Monthly report by tenth month; (6) Yes. Fee $10.

WISCONSIN—(1) Licensed bottl and wholesalers; (2) Wiscon brewers, bottlers and wholesal must obtain registration numb from Commissioner of Taxati No fee. Out-of-state brewers wholesalers must have permit fr Commissioner to ship into st No fee; (3) Yes; (4) Monthly the basis of monthly reports; Monthly reports must be on in Commissioner's office by te day of following month. Tax must accompany report; (6) N

WYOMING — (1) Licensed wh salers; (2) No; (3) No; (4) in-state licensee; (5) An e copy of invoice of every shipm must be sent to commission; No licenses required of shipp brewers salesmen. A licens required by any person, corp tion, or group planning occa for the consumption or sale beer, and such permits may obtained from issuing author cities or counties, at figures by them which range from $ $10 per day for the sale of erages over 3.2%.

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-257

ALPHABETICAL LIST OF U. S. BREWERIES

For Personnel and other data see Brewery *Directory*
Starting Page 87

A

Brg. Co. ..... Anchorage, Alaska
Brg. Co. ..... Altoona, Pa.
Brewery ..... Baltimore, Md.
Brg. Co. ..... New Orleans, La.
Brg. Co. ..... Honolulu, Hawaii
-Busch, Inc. .... Los Angeles, Calif.
-Busch, Inc. ..... Miami, Fla.
-Busch, Inc. ..... Tampa, Fla.
-Busch, Inc. ..... St. Louis, Mo.
-Busch, Inc. ..... Newark, N. J.
Brg. Co. ..... Phoenix, Ariz.
Brg. Co. ..... Chicago, Ill.
g. Co. ..... Chicago, Ill.

B

& Sons, P. ..... Newark, N. J.
rg. Co. ..... Edwardsville, Pa.
/s Div., International Brys., Inc. ..... Covington, Ky.
oducts Co. ..... Ogden, Utah
g. Co. ..... Berlin, Wis.
ing Co. ..... Chicago, Ill.
ishard Co. ..... Portland, Ore.
Breweries ..... Boise, Idaho
Breweries ..... Spokane, Wash.
g. Co. ..... Houghton, Mich.
, Peter ..... Winona, Minn.
Brg. Co. ..... Toledo, Ohio
ewing Co. ..... Akron, Ohio
rg. Co. ..... Cincinnati, Ohio
ister Brg. Corp. ..... San Francisco, Calif.
g. Co. ..... Butte, Mont.

C

County Bev. Co. .... Camden, N. J.
Ace Brg. Co. ..... Chicago, Ill.
rg. Co. ..... Belleville, Ill.
rg. Co. ..... Atlanta, Ga.
rg. Co. ..... Natick, Mass.
rg. Co. ..... Frankenmuth, Mich.
rg. Co. ..... Cleveland, O.
coma Brg. Co. .... Tacoma, Wash.
Centlivre Brg. Corp. ..... Fort Wayne, Ind.
Century Bry. Corp. ..... Norfolk, Va.
Cleveland-Sandusky Brg. Corp. ..... Cleveland, O.
Cold Spring Brg. Co. .... Cold Spring, Minn.
Columbia Brg. Co. ..... Shenandoah, Pa.
Coors Co. Adolph ..... Golden, Colo.
Cumberland Brg. Co. ..... Cumberland, Md.

D

Dawson's Bry. ..... New Bedford, Mass.
Diamond Spring Bry. ..... Lawrence, Mass.
Dixie Brg. Co. ..... New Orleans, La.
Drewrys Limited U.S.A. ..... Chicago, Ill.
Drewrys Limited U.S.A. .... South Bend, Ind.
Du Bois Brg. Co. ..... Du Bois, Pa.
Dubuque Star Brg. Co. ..... Dubuque, Iowa
Duluth Brg. & Malting Co. .. Duluth, Minn.
Duquesne Brg. Co. of Pittsburgh ..... Pittsburgh, Pa.

E

Eagle Brg. Co. ..... Catasauqua, Pa.
Eastern Brg. Corp. ..... Hammonton, N. J.
E & B Brg. Co. ..... Detroit, Mich.
Effinger Brg. Co. ..... Baraboo, Wis.
Enterprise Brg. Co. ..... Fall River, Mass.
Erie Brg. Co. ..... Erie, Pa.
Esslinger's, Inc. ..... Philadelphia, Pa.

F

Falls City Brg. Co. ..... Louisville, Ky.
Falstaff Brg. Corp. ..... San Jose, Calif.
Falstaff Brg. Corp. ..... Fort Wayne, Ind.
Falstaff Brg. Corp. ..... New Orleans, La.
Falstaff Brg. Corp. ..... St. Louis, Mo.
Falstaff Brg. Corp. ..... Omaha, Neb.
Falstaff Brg. Corp. ..... El Paso, Texas
Falstaff Brg. Corp. ..... Galveston, Tex.
Fauerbach Brg. Co. ..... Madison, Wis.
Fehr Brg. Co., Frank ..... Louisville, Ky.
Fesenmeier Brg. Co. .... Huntington, W. Va.

Alphabetical List of U. S. Breweries— (*Continued*)

Fischbach Brg. Co. ..... St. Charles, Mo.
Fisher Brg. Co. ..... Salt Lake City, Utah
Fitger Brg. Co. ..... Duluth, Minn.
Fitzgerald Bros. Brg. Co. ..... Troy, N. Y.
Fleckenstein Brg. Co., Ernst ..... Faribault, Minn.
Fountain Brg. Co. ..... Fountain City, Wis.
Fox Head Brg. Co. ..... Waukesha, Wis.
Fuhrmann & Schmidt Brg. Co. ..... Shamokin, Pa.
Fuji Sake Brg. Co. ..... Honolulu, Hawaii

G

Genesee Brg. Co. ..... Rochester, N. Y.
Gettelman Brewing Co., A. ..... Milwaukee, Wis.
Geyer Bros. Brg. Co. ..... Frankenmuth, Mich.
Globe Brg. Co. ..... Baltimore, Md.
Gluek Brg. Co. ..... Minneapolis, Minn.
Goebel Brg. Co. ..... Detroit, Mich.
Goetz Brg. Co., M. K. ..... Kansas City, Mo.
Goetz Brg. Co., M. K. ..... St. Joseph, Mo.
Grace Bros Brg. Co. ..... Santa Rosa, Calif.
Great Falls Breweries ..... Great Falls, Mont.
Gretz Brg. Co., Wm. ..... Philadelphia, Pa.
Gulf Brg. Co. ..... Houston, Texas

H

Haberle Congress Brg. Co. .. Syracuse, N. Y.
Haffenreffer & Co. ..... Boston, Mass.
Hamm Brewing Co., Theo. ..... Los Angeles, Calif.
Hamm Brg. Co., Theo. ..... San Francisco, Calif.
Hamm Brg. Co., Theo. ..... Baltimore, Md.
Hamm Brg. Co., Theo. ..... St. Paul, Minn.
Hampden-Harvard Brys. ..... Willimansett, Mass.
Hand Bry. Co., Peter ..... Chicago, Ill.
Hauenstein Co., John ..... New Ulm, Minn.
Hawaii Brg. Corp. ..... Honolulu, Hawaii
Hedrick Brg. Corp. ..... Albany, N. Y.
Heileman Brg. Co., G. .... La Crosse, Wis.
Home Brg. Co. ..... Richmond, Va.
Honolulu Sake Brewery & Ice Co. ..... Honolulu, Hawaii
Horlacher Brg. Co. ..... Allentown, Pa.
Hornell Brg. Co. ..... Hornell, N. Y.
Huber Brg. Co., Jos. ..... Monroe, Wis.
Hudepohl Brg. Co. ..... Cincinnati, Ohio
Hull Brg. Co. ..... New Haven, Conn.

I

Ind. Milwaukee Bry. ..... Milwaukee, Wis.
International Brys., Inc. ..... Detroit, Mich.
International Brys., Inc. (Frankenmuth ..... Garden City
International Breweries, Inc. (Iroquois Phoenix Division) ..... Buffalo
International Breweries, Inc. (Old D vision) ..... Findla
International Breweries, Inc. (South Division) ..... Tam

J

Jackson Brg. Co. ..... New Orle
Jones Brg. Co. ..... Smith

K

Kaier Co., Chas. D. ..... Mahanoy
Kiewel Brg. Co. ..... Little Fall
Kingsbury Brys. Co. ..... Sheboyg
Kingsbury-Sioux City Brg. Co. ..... Sioux C
Knapstein Brg. Co. ..... New Lond
Koch Bry., Fred ..... Dunki
Krueger Brg. Co., G. ..... Newa

L

Latrobe Brg. Co. ..... Lat
Leinenkugel Brg. Co., Jacob ..... Chippewa Fa
Liebmann Brys. ..... Oran
Liebmann Brys. ..... Brookl
Liebmann Brys. ..... New Yo
Lion, Inc. ..... Wilkes-B
Lone Star Brg. Co. ..... Okla. C
Lone Star Brg. Co. ..... San Anto
Lucky Lager Brg. Co. ..... Aza
Lucky Lager Brg. Co. .. San Francis
Lucky Lager Brg. Co. .... Vancouv

M

Maier Brg. Co. ..... Los Angel
Mankato Brg. Co. ..... Mankat
Marathon City Brg. Co. .... Marat
Marshfield Brg. Co. ..... Marshf
Menominee-Marinette Brg. Co. ..... Menomi
Metropolis Bry. of N. J. ..... Trent
Metz Brg. Co. ..... Oma
Miller Brg. Co. ..... Milwau
Mineral Spr. Brg. Co. .... Mineral P
Minneapolis Brg. Co. .... Minneapo
Missoula Brg. Co. ..... Missou
Mountain Brg. Co., Inc. ..... Ros
Mt. Carbon Bry. ..... Pott

N

Narragansett Brg. Co. ..... Cran
National Brewing Co. ..... Orl

...abetical List of
...Breweries—(*Continued*)

...al Brewing Co. ..... Baltimore, Md.
...al Brewing Co. of Michigan
..... Detroit, Mich.
...ller's Sons, Louis F. .... Allentown, Pa.
...n Brg. Co. ..... Superior, Wis.

O

...n Brg. Co. ..... Oconto, Wis.
... Brg. Co. ..... Louisville, Ky.
...ading Bry. ..... Reading, Pa.
... Brg. Co. ..... Olympia, Wash.
... Bry. Co., Henry F. ..... Phila., Pa.
... Brg. Co. ..... Oshkosh, Wis.

P

... Brg. Co. ..... Los Angeles, Calif.
... Brg. Co. ..... Peoria Heights, Ill.
... Brg. Co. ..... Newark, N. J.
... Brg. Co. ..... Milwaukee, Wis.
... Brg. Co. ..... San Antonio, Texas
... Brg. Co. ..... Oshkosh, Wis.
... Brg. Co. ..... Detroit, Mich.
... Brg. Co. ..... Flint, Mich.
... Brg. Co. (Jacob Schmidt Brewing
... . St. Paul, Minn.
... . Brooklyn, N. Y.
... . Staten Island, N. Y.
... Co. ..... Chicago, Ill.
... Brg. Co. ..... Cleveland, Ohio
... Brg. Co. ..... Pittsburgh, Pa.
... Brg. Co. ..... Potosi, Wis.

Q

... City Brg. Co. ..... Cumberland, Md.

R

... Bay Brg. Corp.
..... Green Bay, Wis.
... Brg. Co. .... San Francisco Calif.
... Brg. Co. ..... Springfield, Ill.
... Co. ..... Youngstown, Ohio
... Brg. Co. ..... Rhinelander, Wis.
... Brg. Co. ..... Rice Lake, Wis.
... Jacob ..... New York, N. Y.

S

... Brg. Co., F. & M. .... Albany, N. Y.
... Brg. Co., F. & M. .. Brooklyn, N. Y.
... Co., Aug. ..... New Ulm, Minn.
... Co., Jos. ..... Van Nuys Calif.
... Brwing Co., Jos. ..... Tampa, Fla.
... Co., Jos. ..... Kansas City, Mo.
... Co., Jos. ..... Brooklyn, N. Y.

Schlitz Brg. Co., Jos. ..... Milwaukee, Wis.
Schmidt & Sons, C. ..... Philadelphia, Pa.
Schmidt Brg. Co., Jacob .... St. Paul, Minn.
Schoenhofen Edelweiss Co. .... Chicago, Ill.
Schoenling Brg. Co. ..... Cincinnati, Ohio
Sebewaing Brg. Co. ..... Sebewaing, Mich.
Sicks' Rainier Brewing Co. .... Seattle, Wash.
Sicks' Rainier Brewery Co. .. Spokane, Wash.
Sieben's Bry. Co. ..... Chicago, Ill.
Silver Springs Brg. Co. ..... Tacoma, Wash.
Simon Bry., Wm. ..... Buffalo, N. Y.
Southern Div.-International Breweries, Inc.
..... Tampa, Fla.
Spearman Brg. Co. ..... Pensacola, Fla.
Spoetzl Bry. ..... Shiner, Texas
Standard Rochester Brg. Co.
..... Rochester, N. Y.
Standard Brg. Co. ..... Cleveland, Ohio
Star Union Products Co. ..... Peru, Ill.
Stegmaier Brg. Co. ..... Wilkes-Barre, Pa.
Sterling Brewers, Inc. ..... Evansville, Ind.
Stevens Point Bev. Co. .... Stevens Point, Wis.
Storz Brg. Co. ..... Omaha, Neb.
Straub Bry. ..... St. Marys, Pa.
Stroh Bry. Co. ..... Detroit, Mich.
Sunshine Brg. Co. ..... Reading, Pa.

T

Tivoli Brg. Co. ..... Denver, Colo.
Two Rivers Bev. Co. ..... Two Rivers, Wis.

V

Valley Brg. Co. ..... Mercedes, Tex.
Valley Forge Brg. Co. ..... Norristown, Pa.
Van Merritt Brg. Co. ..... Chicago, Ill.

W

Wagner Brys., Aug. ..... Columbus, Ohio
Walter Brg. Co. ..... Pueblo, Colo.
Walter Brg. Co. ..... Eau Claire, Wis.
Walter Brg. Co., Geo. ..... Appleton, Wis.
Warsaw Brg. Corp. ..... Warsaw, Ill.
Wausau Brg. Co. ..... Wausau, Wis.
Weber Brg. Co., G. ..... Theresa, Wis.
West Bend Lithia Co. ..... West Bend, Wis.
West End Brg. Co. ..... Utica, N. Y.
Wiedemann Brg. Co., Geo. .... Newport, Ky.
Worcester Brg. Co. ..... Worcester, Mass.

Y

Yuengling & Son, D. G. ..... Pottsville, Pa.

BEER BRANDS IN USE

[Editor's Note: This list of fermented malt beverage brands in use by United States brewers has been compiled from questionnaires and no claim is made that it represents a complete compilation of such brands registered or in use. If you contemplate adopting a new brand, a search of U. S. Patent Office records is advisable.]

A

ABC ..... Maier Brg. Co.
Ace ..... Sioux City Brg. Co.
Adel Brau ..... Wausau Brg. Co.
Adler Brau ..... Geo. Walter Brg. Co.
Aikane ..... Fuji Sake Brg. Co.
Alfter Brau ..... Knapstein Brg. Co.
Alps Brau ..... Centlivre Brewing Corp.
Altes Golden Lager National Brg. Co. of ..... Michigan
Ambassador Beer ..... G. Krueger Brg. Co.
American .... American Bry., Baltimore, Md.
Andeker ..... Pabst Brg. Co.
A-1 ..... Arizona Brg. Co.
Arrow "77" ..... Globe Brg. Co.
Atlas Prager ..... Atlas Brg. Co.
Augsburger ..... Van Merritt Brg. Co.
Augustiner ..... August Wagner Brys.

B

Badger Brew ..... Effinger Brg. Co.
Ballantine's ..... P. Ballantine & Sons
Bancroft ..... Worcester Brg. Co.
Bartels ..... Bartels Brg. Co.
Bavarian Brand ..... Mt. Carbon Bry.
Bavarian Premium ..... Mt. Carbon Bry.
Bavarian/s Beer ..... International Brys.
Becker's Mellow ..... Becker Prod. Co.
Berghoff 1887 ..... Walter Brg. Co.
Berkshire Ale ..... Old Reading Bry.
Berlin ..... Berlin Brg. Co.
Berlin Country Club ..... Berlin Brg. Co.
Best "Brewery Fresh" ..... Best Brg. Corp.
Beyrer Chaska ..... Fred Beyrer
Black Label ..... Carling Brg. Co.
Blitz Weinhard ..... Blitz-Weinhard Co.
Blue Ribbon ..... Pabst Brg. Co.
Bobbie ..... Two Rivers Bev. Co.
Boh Light Lager ..... Enterprise Brg. Co.
Bohemian Club ..... Bohemian Brys., Idaho
Bohemian Club ..... Bohemian Brys., Wash.
Bohemian Club ..... Bohemian Brg. Co., Joliet, Ill.
Bohemian Light Lager .... Enterprise Brg. Co.
Bohio ..... Camden County Beverage Co.
Bosch Gilt Edge ..... Bosch Brg. Co.
Bosch Superior Stock ..... Bosch Brg. Co.
Boston ..... Haffenreffer
Braumeister ... Independent Milwaukee
Breunig's ..... Rice Lake Brg.
Brew 102 ..... Maier Brg.
Brew 66 Sick's Rainier Brg. Co., ... Seattle,
Brown Derby ..... Bohemian Brys., Div. Atlantic Br
Bub's & Bub's Strong ..... Peter Ba
Buckeye ..... Buckeye Br
Budweiser ..... Anheuser
Burgemeister Pilsner .... Warsaw Brg.
Burgermeister ..... Burgermeister Brg.
Burger ..... Burger Br
Burger Brau ..... Burger Brewi
Busch Bavarian ..... Anheuser
Butte ..... Butte Br

C

Camden ..... Camden County Be
Canadian Ace Brand ..... Canadian Ace Br
Carling's Red Cap Ale .... Carling Br
Carling's Black Label ..... Carling Br
Carling's Stag Beer .... Carling Brewi
Centennial ..... Fauerbach Br
Champagne Velvet ..... Atlantic Br
Champale Malt Liquor ..... Metropolis Bry.
Chevy 85 Ale ..... Hudepohl Br
Chief Oshkosh ..... Oshkosh Br
Club ..... Sebewaing Br
Clyde ..... Enterprise Br
Coburger ..... Horlacher Br
Cold Spring ..... Cold Spring Br
Colorado Gold Label ..... Walter Br
Columbia ..... Columbia Brg.
Congress ..... Haberle Congress
Continental Special ..... Blatz Br
Coors Golden ..... Adolph Co
Country Club Malt Liquor ..... Louis F. Nauvoile
Cream Ale ..... Louis F. Nauvoile
Crevy 85 Ale ..... Hudepohl Br
Croft Ale ..... Narragansett
Crystal Rock ..... Cleveland-Sandusky Br
Culmbacher ..... Blatz

Brands— *(Continued)*

D

's Gold Crown ..... Dawson's Bry.
's Diamond Ale ..... Dawson's Bry.
rand ..... August Schell Brg. Co.
..... Fred Koch Bry., Inc.
Dry Ale ..... Genesee Brg. Co., Inc.
..... Dixie Brg. Co.
nder ..... American Bry.
nder ..... Ind. Milwaukee Brewery
..... Drewrys Ltd., U.S.A.
udweiser ..... Dubois Brg. Co.
n Star ..... Dubuque Star Brg. Co.
Beer ..... Worcester Brg. Co.
h ..... Duquesne Brg. Co. (Pitt.)
ne ..... Duquesne Brg. Co.

E

Old Tap Lager ..... Pabst (Calif.)
..... E & B Brg. Co.
n ..... Schoenhofen Edelweiss Co.
..... Effinger Brg. Co.
e Ale .... Hampden-Harvard Brg. Co.
ark ..... Ind. Milwaukee Bry.
Club ..... Best Brg. Corp.
..... Van Merritt Brg. Co.
Premium ..... Jones Brg. Co.
r Premium ..... Esslinger's, Inc.
..... DuBois Brg. Co.
..... Potosi Brg. Co.

F

..... Fuhrmann & Schmidt Brg. Co.
y ..... Falls City Brg. Co.
..... Falstaff Brg. Corp.
Scotch Brand Ale .... Liebmann Brys.
Select ..... Jacob Schmidt Brg. Co.
h ..... Fauerbach Brg. Co.
/t ..... Frank Fehr Brg. Co.
h Export ..... Fischbach Brg. Co.
..... Fisher Brg. Co.
..... Fitger Brg. Co.
d ..... Fitzgerald Bros. Brg. Co.
..... Ernst Fleckenstein Brg. Co.
..... American Brewery, Inc.
yler ..... West End Brg. Co.
Brew ..... Fountain Brg. Co.
ase ..... Fox Head Brg. Co.
"400" ..... Fox Head Brg. Co.
uth ..... International Brys.
mune ..... Fuji Sake Brg. Co.

G

..... Griesedieck Bros.
..... August Wagner Brys.
..... Genesee Brg. Co.
..... A. Gettelman Brg. Co.
ankenmuth Lager ..... Geyer Bros.

Gibbons ..... The Lion Inc.-Gibbons Bry.
Gilt Edge ..... Bosch Brg. Co.
Gliz ..... Gluek Brg. Co., Inc.
Gluek ..... Gluek Brg. Co.
Goebel Bantam ..... Goebel Brg. Co.
Goebel Beer and Ale ..... Goebel Brg. Co.
Goebel Extra Dry ..... Goebel Brg. Co.
Goetz ..... M. K. Goetz Brg. Co.
Goetz Pale Near Beer
..... M. K. Goetz Brg. Co.
Gold Label ..... Walter Brg. Co., Colo.
Gold Medal ..... Stegmaier Brg. Co.
Golden Amber ..... Renner Co.
Golden Anniversary ..... Fred Koch Bry.
Golden Bock ..... Liebmann Brys.
Golden Glow ..... Jos. Huber Brg. Co.
Golden Lager .... Southern Brg. Co. (Calif.)
Grain Belt ..... Minneapolis Brg. Co.
Grand Prize ..... Gulf Brewing Co.
Great Falls Select ..... Great Falls Brys.
Gretz ..... Wm. Gretz Brg. Co.
Griesedieck Bros. G/B
..... Griesedieck Bros. Bry. Co.

H

Haffenreffer ..... Haffenreffer & Co., Inc.
Hahnes Porter ..... DuBois Brg. Co.
Hamm's Preferred .... Theo. Hamm Brg. Co.
Hampden ..... Hampden Harvard Brys.
Hanley ..... Narragansett Brg. Co.
Hapsburg ..... Best Brg. Corp.
Harvard ..... Hampden-Harvard Brys.
Hauenstein ..... John Hauenstein Co.
Hedrick ..... Hedrick Brg. Co.
Heidel-Brau ..... Kingsbury Brys.
Heileman ..... G. Heileman Brg. Co.
Hi-Brau ..... Jos. Huber Brg. Co.
High Life ..... Miller Brg. Co.
Highlander ..... Missoula Brg. Co.
Holihan's ..... Diamond Spring Bry.
Holland ..... Eastern Brg. Corp.
Hornell ..... Hornell Brg. Co.
Horseshoe Curve ..... Altoona Brg. Co.
Horton ..... Metropolis Bry. of N. J.
Huber ..... Jos. Huber Brg. Co.
Hudepohl ..... Hudepohl Brg. Co.
Hull's ..... Hull Brg. Co.

I

India Pale ..... P. Ballantine & Sons
Irish Brand Cream Ale
..... F. & M. Schaefer Brg. Co.
Iron City ..... Pittsburgh Brg. Co.
Iroquois ..... International Brys., Inc.

J

Jacob Ruppert Ale ..... Jacob Ruppert Bry.
Jax ..... Jackson Brg. Co.
Jordan ..... Mankato Brg. Co.

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Beer Brands— (*Continued*)

K

Kaier's	Chas. D. Kaier Co.
Karlsbrau	Duluth Brg. & Mltg. Co.
Kato Premium	Mankato Brg. Co.
KDK	Hornell Brg. Co.
Keglet	Esslinger's, Inc.
Kings XX Ale	Queen City Brg. Co.
Kingsbury Pale	Kingsbury Brys. Co.
Kingsbury Aristocrat	Kingsbury Brys. Co.
Kingsbury Near Beer	Kingsbury Brys. Co.
Kinpyo-Masamune	Fuji Sake Brg. Co.
Knapp's Bohemian Style	Knapstein Brg. Co.
Knapstein's Old Lager	Knapstein Brg. Co.
Knickerbocker	Jacob Ruppert
Koch's	Fred Koch Bry.
Koehler's	Erie Brg. Co.
Krueger	G. Krueger Brg. Co.

L

Lancers Ale	Arizona Brg. Co.
Land of Lakes	Pilsen Brewing Co.
Leisenkugel's Beer	Jacob Leisenkugel
Lithia	West Bend Lithia Co.
Little Adler	Geo. Walter Brg. Co.
Log Cabin	Ind. Mil. Bry.
Lone Star	Lone Star Brg. Co.
Lord Camden	Camden Cty. Bev. Co.
Lord Chesterfield	D. G. Yuengling & Son
Lucky Lager	Lucky Lager Brg. Co.

M

Meltcrest Non-Alcoholic Beer	Metropolis Bry. of N. J.
Malt Liquor	G. Heileman Brg. Co.
Malvaz	Van-Merritt Brg. Co.
Mann's Export Ale	Cumberland Brg. Co.
Marathon	Marathon City Brg. Co.
Marathon Old Original	Marathon City Brg. Co.
Marshfield Premium	Marshfield Brg. Co.
Matt's Premium Lager	West End Brg. Co.
Meister Brau	Peter Hand Bry. Co.
Menasha Gem	Walter Bros. Brg. Co.
Metz Malt Liquor	Metz Brg. Co.
Michelob	Anheuser-Busch
Miller High Life	Miller Brg. Co.
Milwaukee's Best	A. Gettelman Br
Mineral Spring	Mineral Spring Br
Monarch	Monarch Br
Monarch	Van Merritt Br
Mug	Berger Br
My Beer	Metz Br

N

Narragansett	Narragansett Br
National Bohemian	National Brg. Co. of Mi
National Bohemian	National Brg. Co., Baltimore, M Orlando, Fla.
National Premium	National Brg. Co., Baltimor
National Sportsman Ale	National Brg. Co. of Mi
Neuweiler's	Neuweiler Brg.
Nordlager	Fitger Br
Northern	Northern B

O

Oconto	Oconto B
Oertel's '92	Oertel B
Old Abbey	Wm. Sim
Old Craft	Monominee-Marinette
Old Crown	Centlivre Bre
Old Dutch	Eagle B
Old Dutch	International Br
Old Dutch	Metropolis Bry.
Old Export	Cumberland
Old Fashion	Fox Head B
Old Fashioned	Eulberg
Old German	Queen City
Old Heidelberg	Blatz
Old Oxford	Ren
Olde Pilsener	Silver Springs
Old Portage	Eulberg
Old Ranger	Hornell
Old Reading	Old Read
Old St. Louis Select	Griesedieck Bros.
Old Shay	American
Old Stock Ale	Drewrys Limited U.S
Old Stock	Standard Rochester
Old Style	Bavarian

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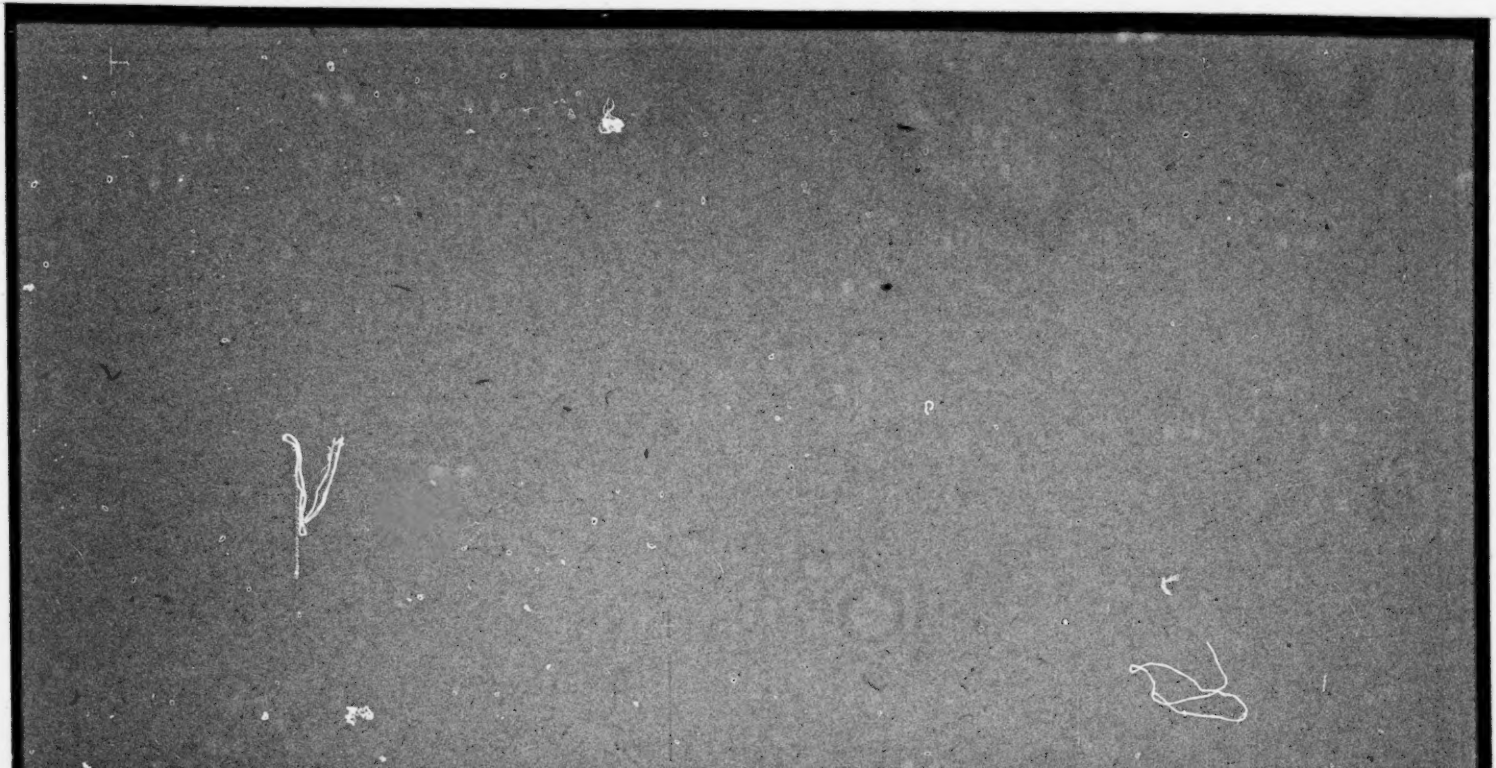

Brands— (*Continued*)

yle Lager ..... G. Heileman Brg. Co.
urray Porter ..... G. Krueger Brg. Co.
ankard Ale ..... Pabst Brg. Co.
op ..... Enterprise Brg. Co.
avern ..... Warsaw Brg. Corp.
imers Ale
..... Cleveland-Sandusky Brg. Corp.
imers Lager ..... West Bend Lithia Co.
Waukesha ..... Fox Head Brg. Co.
Oxford Cream
..... D. G. Yuengling & Son
Virginia ..... Mountain Brg. Co.
pia ..... Olympia Brg. Co.
Natural Process .. A. Gettelman Brg.
k ..... Henry F. Ortlieb Bry. Co.
art ..... Standard Rochester Brg. Co.
ked ..... Standard Rochester Brg. Co.

P

Blue Ribbon ..... Pabst Brg. Co.
Reserve ..... Old Reading Bry.
Quiz ..... Esslinger's, Inc.
..... Pearl Brg. Co.
s .... Peoples Brg. Co., Oshkosh, Wis.
ction ..... Horlacher Brg. Co.
r's Famous ..... Pfeiffer Brg. Co.
r's Famous .... Jacob Schmidt Brg. Co.
ck ..... Haffenreffer & Co.
..... Piel Bros.
Post Malt Liquor
..... Walter Brg. Co., Colo.
's Original ..... Metropolis Bry. of N. J.
er ..... Diamond Spring Bry.
r ..... DuBois Brewing Co.
r ..... Fred Koch Bry.
r ..... Horlacher Brg. Co.
er ..... G. Weber Brg. Co.
C. Pilsener ..... Pilsener Brg. Co.
Special ..... Stevens Point Bev. Co.
..... P. Ballantine & Sons
Champion Sake
..... Honolu'u Sake Bry. & Ice Co.
..... Potosi Brg. Co.
om ..... Minneapolis Brg. Co.
om Ale ..... Louis F. Neuweiler's Sons
om F & S
..... Fuhrmann & Schmidt Brg. Co.
om Metz ..... Metz Brg. Co.
om Quality Falstaff
..... Falstaff Brg. Corp. (Ind.)
..... Canadian Ace Brg. Co.
..... Hawaii Brg. Corp.
..... Valley Forge Brg. Co.
e Seal .... Hampden-Harvard Brg. Co.
e Stock ..... Blatz Brg. Co.
e Stock Malt Liquor
..... Haffenreffer & Co.
e Stock 22 ..... Goebel Brg. Co.
e ..... Lone Star Brg. Co.

R

Rahr's ..... Rahr Green Bay Brg. Corp.
Rainier
...Sicks' Rainier Brg. Co., Seattle, Wash.
Rainier
...Sicks' Rainier Brg. Co., Spokane, Wash.
Rakuen ..... Fuji Sake Brg. Co.
Rams Head ..... Valley Forge Brg. Co.
Reading Premium ..... Old Reading Bry.
Red Cap Ale ..... Carling Brg. Co.
Red Top ..... Atlantic Brg. Co.
Regal ..... Anheuser-Busch, Inc.
Regal American Brg. Co., New Orleans, La.
Regal Select ..... Regal Pale Brg. Co.
Regal Supreme ..... Mankato Brg. Co.
Regent ..... Century Bry. Corp.
Reisch Beer ..... Reisch Brg. Co.
Renner Golden Amber ..... Renner Co.
Reserve ..... Peter Hand Brewery Co.
Rex ..... Fitger Brg. Co.
Rheingold ..... Liebmann Brys.
Rheingold ..... Rheingold Brg. Co.
Rhinelander ..... Rhinelander Brg. Co.
Rib Mountain ..... Wausau Brg. Co.
Richbrau ..... Home Brg. Co.
Rolling Rock ..... Latrobe Brg. Co.
Royal ..... American Brg. Co., Hawaii
Royal Amber .... Geo. Wiedemann Brg. Co.
Royal 58 ..... Duluth Brg. & Malting Co.
Ruff's Imperial ..... Marathon City Brg.
Ruppiner ..... Jacob Ruppert

S

Sabana ..... Jackson Brg. Co.
St. Marys ..... Straub Bry.
Schaefer Beer .... F. & M. Schaefer Brg. Co.
Shannon Cream Stout ..... American Bry.
Schlitz ..... Jos. Schlitz Brg. Co.
Schmidt's ..... E & B Brg. Co.
Schmidt's of Philadelphia
..... C. Schmidt & Sons
Schmidt's ..... Jacob Schmidt Brg. Co.
Schoen's Old Lager ..... Wausau Brg. Co.
Schoenling Cincinnati's Finest
..... Schoenling Brg. Co.
Schott Ale ..... International Brys.
Scotch Brand Ale ..... Liebmann Brys.
Sebewaing ..... Sebewaing Brg. Co.
Sepp'l Brau ..... Star Union Prod. Co.
Shiner Texas Special ..... Spoetzl Bry.
Short Snorter ..... Horlacher Brg. Co.
Shorty ..... Rhinelander Brg. Co.
Sieben's Real Lager ..... Sieben's Bry. Co.
Silver Bar
International Breweries-Southern Div.
..... Tampa, Fla.
Silver Cream
..... Menominee-Marinette Brg. Co.
Silver Top ..... Duquesne Brg. Co. (Pitt.)
Simon Pure ..... Wm. Simon Bry.
Spearman ..... Spearman Brg. Co.
Special ..... Chas. D. Kaier Co.

Beer Brands— (*Continued*)

Special Brew Porter ..... Chas D. Kaier Co.
Special Export ..... G. Heileman Brg. Co.
Special Premium Ale .... Chas. D. Kaier Co.
Sport ..... Sebewaing Brg. Co.
Stag ..... Carling Brg. Co.
Stag ..... Mankato Brg. Co.
Standard ..... Standard Rochester Brg. Co.
Star Model ..... Star Union Prod. Co.
Star Pilsner ..... Star Union Prod. Co.
Sterling ..... Sterling Brs.
Stite ..... Gluek Brg. Co.
Stock ..... Worcester Brg. Co.
Stock Ale ..... Diamond Springs Bry.
Stoney's Gold Crown ..... Jones Brg. Co.
Storck ..... Storck Bry.
Storz Premium Select ..... Storz Brg. Co.
Storz Triumph ..... Storz Brg. Co.
Straight 8 ..... Spearman Brg. Co.
Straub ..... Straub Bry.
Stroh's Bohemian ..... Stroh Bry. Co.
Sunshine ..... Sunshine Brg. Co.
Superfine ..... Marathon City Brg. Co.

T

Tadcaster ..... Worcester Brg. Co.
Takara Masamune and Musume Sake
..... Honolulu Sake Bry. & Ice Co.
Tavern Pale ..... Atlantic Brg. Co.
Tech ..... Pittsburgh Brg. Co.
Tex ..... Jackson Brg. Co.
Tiger Head ..... C. Schmidt & Sons
Tivoli ..... Tivoli Brg. Co.
Top Hat ..... Schoenling Brg. Co.
Tops ..... American Brg. Co., Hawaii
Topper ..... Standard Rochester Brg. Co.
Topper American Dortmunder
..... Standard Rochester Brg. Co.
Tropical ..... International Brys.
12 Horse ..... Genesee
20 Grand Ale ..... Atlantic

U

Uinta Club ..... Becker
Utica Club ..... West End

V

Valley Forge ..... Valley Forge
Van Merritt .. Bohemian Brg. Co.,
Vic's Special ..... Northern
Viking
..... Bohemian Brys., Div. Atlantic

W

"W" ..... Fox Head
Walter's .. Walter Brg. Co., Eau Clai
Walter's Pilsner .... Walter Brg. Co.
Weber Waukesha
..... Fox Head
Wee-Willy ..... Marathon City
Wellington ..... Walter
Wellington Malt Stout ..... Walter
West Bend Old Timer's Lager
..... West Bend
Western Style ..... Silver Springs
West Virginia Special .. Fesenmeier
White Cap ..... Two Rivers
Wiedemann's Bohemian
..... Geo. Wiedemann
Wisconsin Premium
..... Fox Head

X

X/L ..... Fehr
XXX Ale ..... P. Ballantine

Y

Yuengling ..... D. G. Yuengling
Yusay Pilsen ..... Pilsen

IN THE UNITED STATES DISTRICT COURT
Government Exhibit No. GX-265

METHODS OF TAX COLLECTION, BY STATES
JULY 1, 1962

STATE	RATE	METHOD OF PAYMENT	Withdrawals MADE AND PAID
[illegible]	2¢ per 12 oz. or fraction.	Tax paid crowns and lids.	Brewer.
[illegible]	25¢ a gallon.	Monthly reports.	Brewer.
[illegible]	8¢ a gallon.	Monthly reports.	Wholesaler.
[illegible]	$5.00 a barrel of 32 gallons; over 8% by weight 20¢ a gallon.	Monthly reports.	Wholesaler.
[illegible]ornia	$1.24 a barrel.	Monthly reports.	Calif. brewers & importers.
[illegible]ado	4¢ a gallon.	Monthly reports.	Col. brewers & wholesalers.
[illegible]ticut	$2.00 a barrel; less than ½ barrel, 6-2/3¢ per gal.	Monthly reports.	Conn. brewers & wholesalers.
[illegible]are	$2.00 a barrel.	Weekly payment.	Importer (wholesaler).
[illegible] of Col.	$1.80 a barrel.	Monthly reports.	D.C. brewers & wholesalers.
[illegible]da	Draught - 2½¢ a gallon. Packaged - 3¢ a pint or fraction.	Monthly reports.	Florida brewers & wholesalers.
[illegible]ia	Draught - $9.00 a barrel. Packaged - 4¢ per 12 ozs., graduated proportionally.	Tax paid crowns and lids. Stamps on draught beer.	Brewer.
[illegible]	16% of wholesale price.	Monthly reports.	Hawaii brewers & wholesalers.
[illegible]	$4.60 a barrel.	Monthly reports.	Brewer.
[illegible]nois	8¢ a gallon.	Monthly reports.	Illinois brewers and importing distributors.
[illegible]na	8¢ a gallon plus ½¢ a gallon enforcement tax.	Monthly reports. (Stamps on reciprocal basis.)	Brewer.
[illegible]	$2.48 a barrel.	Monthly reports.	Ia. brewers & wholesalers.
[illegible]as	3.2 - $3.10 a barrel. Over 3.2 - 12¢ a gallon.	Monthly reports.	Brewer.
[illegible]tucky	$2.50 a barrel.	Monthly reports.	Brewer.
[illegible]siana	$10.00 a barrel. Parishes and municipalities also may impose excise tax not exceeding $1.80 a barrel.	Monthly reports.	Louisiana brewers and importers.
[illegible]e	25¢ a gallon.	To Liquor Commission with import order.	Wholesaler.
[illegible]land	3¢ a gallon.	Maryland beer: Monthly reports. Out-of-state beer: Taxpaid crowns and lids, stamps on draught beer.	Brewer.
[illegible]achusetts	$2.00 a barrel.	Monthly reports.	Mass. brewers & importers.
[illegible]igan	2¢ per 12 ozs., and proportionately.	Mich. beer: On meter readings. Out-of state beer: Semi-monthly reports (or crowns and stamps, reciprocally).	Brewer.
[illegible]esota	3.2 - $1.60 a barrel. Over 3.2 - $3.20 a barrel.	Monthly reports.	Brewer.
[illegible]ssippi	$.4268 a gallon.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer. Mississippi wholesaler.
[illegible]souri	25¢ a barrel.	Monthly reports.	Brewer.
[illegible]ana	$1.80 a barrel.	Monthly reports.	Mont. brewers & wholesalers.
[illegible]aska	4¢ a gallon.	Monthly reports.	Brewer.

[fol. 439]

Table 44 METHODS OF TAX COLLECTION, BY STATES - Continued
JULY 1, 1952

STATE	RATE	METHOD OF PAYMENT	BY WHOM PAID
Nevada.....	6¢ a gallon.	Monthly reports.	Nev. brewers & impor
New Hampshire...	$2.00 a barrel.	Monthly reports.	N.H. brewers & whole
New Jersey.....	3-1/3¢ a gallon.	Monthly reports.	N.J. brewers & whole
New Mexico.....	5½¢ a gallon.	Monthly reports.	Wholesaler.
New York.....	3-1/3¢ a gallon.	Monthly reports.	N.Y. brewers & impor
North Carolina..	$10.00 a barrel. 6 oz., 1½¢; 7 oz., 2.1¢; 12 oz., 3½¢; 16 oz., 4-2/3¢; quart, 9-1/3¢; others at .3¢ an ounce.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer.
North Dakota....	Not more than 4%, $2.48 a barrel and if in bottles or cans, ½¢ a pint additional. Over 4% by weight, $3.72 a barrel.	Monthly reports.	Wholesaler.
Ohio.....	$2.50 on draught beer. In cans & bottles ½¢ per 8 ozs.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer; on out-of-st draught beer, stamps be affixed by brewer Ohio wholesaler.
Oklahoma.....	$10.00 a barrel.	Monthly reports.	Okla. brewers & whole
Oregon.....	$1.30 a barrel.	Monthly reports.	Ore. brewers & whole
Pennsylvania....	$3.40 a barrel. 1/3¢ per half pint or fraction. 1¢ per pint or fraction. 24¢ a case of 24/12.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer.
Rhode Island....	$1.80 a barrel.	R.I. beer: Monthly reports. Out-of-state beer: With purchase order placed with Liquor Control Administration.	Brewer, on Rhode Isl beer. Wholesaler, on of-state beer.
South Carolina..	Draught, 45¢ a gallon. Packaged, 5¢ per 7 oz. or fraction thereof. (Includes surtax 7½¢ a gallon, ½¢ per 7 oz.)	Taxpaid crowns and lids. Stamps on draught beer. Surtax is paid with monthly reports.	Brewer (or South Car wholesaler). Surtax is paid by S.C. wholesalers.
South Dakota....	$2.00 a barrel.	Monthly reports.	Wholesaler.
Tennessee.....	$3.40 a barrel. Also 17% of wholesale price, for counties & municipalities.	Monthly reports.	Brewer (in-state or ticated; otherwise saler). Wholesaler, out-of-state beer.
Texas.....	$4.30 a barrel on 4% alcohol by weight. 16.5¢ a gallon over 4%.	4%: Monthly reports. Over 4%: Stamps.	4%: Texas brewers porters. Over 4%: (or Texas wholesaler).
Utah.....	$1.10 a barrel for 3.2% alcohol by weight. $4.00 a barrel over 3.2%.	Monthly reports.	Utah brewers & impor
Vermont.....	20¢ a gallon.	Monthly reports.	Wholesaler.
Virginia.....	$4.00 a barrel. 1-7/8¢ per 7 oz., 2½¢ up to 12 oz., 3-1/12 mills per oz. in containers over 12 oz.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer.
Washington.....	$1.00 a barrel.	Monthly reports.	Brewer.
West Virginia...	$5.50 a barrel.	Taxpaid crowns and lids. Stamps on draught beer.	Brewer.
Wisconsin.....	$1.00 a barrel.	Monthly reports.	Wisconsin brewers & salers on out-of-st
Wyoming.....	2¢ a gallon.	Monthly reports.	Wholesaler.

[fol. 440] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

[Title omitted]

DEFENDANT'S MOTION FOR DISMISSAL AT CLOSE OF PLAINTIFF'S CASE—Filed January 28, 1964

Pursuant to the provisions of Rule 41(b) of the Federal Rules of Civil Procedure, defendant Pabst Brewing Company, by its attorneys, moves the court for judgment of dismissal upon the ground that, upon the facts and the law, plaintiff has shown no right to relief.

Respectfully submitted, /s/ John T. Chadwell. /s/ Glenn W. McGee. /s/ Ray T. McCann. /s/ David A. Nelson. Attorneys for Pabst Brewing Company.

January 28, 1964

[fol. 441] [File endorsement omitted]

[fol. 442] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

BRANCH 1

Civil Action No. 59-C-215

UNITED STATES OF AMERICA, Plaintiff,

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., AND THE VAL CORPORATION, Defenants.

TRANSCRIPT OF PROCEEDINGS UPON MOTION OF DEFENDANT, PABST BREWING COMPANY, TO DISMISS—April 30, 1964.

BE IT REMEMBERED that heretofore, to-wit, commencing on Thursday, April 30, 1964, at 10:15 o'clock a.m. of said day, the above-entitled matter came on for hearing before the Honorable Robert E. Tehan, Chief Judge of said Court, upon the pleadings heretofore filed herein.

* * * * * * *

[fol. 443] STATEMENT BY MR. LONG, ON BEHALF OF GOVERNMENT AS TO WHY CASE SHOULD NOT BE DISMISSED.

Mr. Long: Thank you, your Honor.

If the Court please, this case is here on the motion of the Pabst Company to dismiss at the end of the Government's case.

[fol. 444] The Government believes that it has demonstrated in its briefs, and we will emphasize that we have made a case and that we are entitled to relief and it should not be dismissed at the end of the Government's case without hearing the defense.

This action is under § 7 of the Clayton Act, charging that the merger of the Pabst and the Blatz Brewing Companies in the line of commerce (beer) in three sections of the country which the Government selected—Wisconsin, the States of Illinois, Michigan, Wisconsin, and the United

States—there is the reasonable probability of adverse effect on competition or tendency to create a monopoly.

Now, there are only two issues that are left in this case. The first is whether the State of Wisconsin and the three States of Wisconsin, Illinois and Michigan are sections of the country within this statute and whether the effect of the merger may probably lessen competition or tend to create a monopoly.

• • • • • • •

[fol. 445] The Court: You mentioned the listing of the number of breweries. Does a showing that the number of breweries has decreased since 1934 with no showing of the reasons for the decrease establish a history of tendency toward concentration in the beer business?

Mr. Long: We think it does. We think it does, because whatever may be the reason, to whatever you may attribute the attrition, going out of business of breweries, it is a dramatic picture of the elimination of competitors—constant elimination of competitors, I think, from 700 in the United States—750 down to 161 during the period of the Government's case here.

• • • • • • •

[fol. 446] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 59-C-215

UNITED STATES OF AMERICA, Plaintiff,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants.

OPINION—September 22, 1964

On or about July 30, 1958, Pabst Brewing Company acquired the assets and business of Blatz Brewing Company, a wholly owned subsidiary of Schenley Industries, Inc., for approximately $11,000,000 in cash, $3,500,000 in debentures, 200,000 share sof Pabst common capital stock and a stock purchase warrant for an additional 350,000 shares of such stock. On October 1, 1959, the United States of America filed a complaint in this court pursuant to § 15 of the Clayton Act (Title 15 U.S.C. § 25) alleging that the effect of that acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in the United States, the State of Wisconsin, and the three state area of Wisconsin, Illinois and Michigan in violation of § 7 of the Clayton Act (Title 15 U.S.C. § 18 and asking in part that the court adjudge the acquisition to be illegal and require Pabst to divest itself of the business and assets of Blatz.[1]

Prior to the trial, an intensive pre-trial program produced considerable agreement between the parties. It was [fol. 447] agreed that the line of commerce involved herein is the beer industry, meaning the production, sale and

[1] The defendant, Val Corporation, formerly Blatz Brewing Company, and the defendant, Schenley Industries, Inc., have been joined and retained in this action solely for purposes of relief. (See *United States* v. *Pabst Brewing Company* (E. D. Wis., 1960) 183 F. Supp. 220)

distribution of beer and that the continental United States is a relevant geographic market for purposes of this case. Jurisdiction and venue were admitted by Pabst, as was the fact that prior to the acquisition both Pabst and Blatz sold beer in interstate commerce, which Pabst continues to do. Issue remained, however, as to whether the State of Wisconsin and the three state area of Wisconsin, Illinois and Michigan are also appropriate sections of the country within which the probable effect of the acquisition is to be judged, Pabst claiming, contrary to the plaintiff's allegations, that the only relevant market area is the continental United States. There was also no meeting of the minds on the probable effect of the acquisition, Pabst denying that the effect thereof may be substantially to lessen competition in the areas advanced by the plaintiff as relevant and alleging that the purpose thereof was to avoid the consequences of Pabst's declining sales and increasing losses [2] and to preserve and promote competition and that the effect thereof was to preserve and promote competition. The plaintiff therefore faced at the trial the burden of proving, as it alleged, that Wisconsin and the three state area of Wisconsin, Illinois and Michigan are sections of the country within which the probable effect of the acquisition of Blatz by Pabst is to be examined and that the probable effect of that acquisition may be substantially to lessen competition or to tend to create a monopoly in the beer industry in either the continental United States or, if proved to be relevant market areas, in the State of Wisconsin or the three state area.

Pre-Trial Occurrences

After issue was joined, a series of pre-trial conferences was held to prepare this case for trial on the issue of [fol. 448] whether § 7 had been violated It was determined that a hearing on the type of relief to be afforded, if any, would await this court's decision on the substantive issue. It was further determined that prior to trial the

[2] The plaintiff moved to strike this "failing enterprise" defense, contending that it was available only when the acquired, not the acquiring, entity was failing. This motion was denied. (See order of March 31, 1961

plaintiff would identify the persons it had interviewed in connection with this case and those it intended to call as witnesses and would identify all documentary evidence upon which it would rely and that Pabst would make similar revelations to the plaintiff. Pursuant to the court's pre-trial directions, the plaintiff listed seventy-one persons whom it proposed to call as witnesses at the trial.

When this case was originally scheduled for trial on October 14, 1963, by order of May 7, 1963, it was estimated that the trial would last two months, such estimate being based in part on the plaintiff's expression of intention to call seventy-one witnesses. Thereafter, the trial was rescheduled twice, finally for January 27, 1964, and since the plaintiff still indicated that it would call seventy-one witnesses, no change was made in the trial estimate.

On January 3, 1964, the plaintiff and Pabst each moved for an order granting permission to issue subpoenaes to witnesses residing more than 100 miles from Milwaukee and outside of this district. In the plaintiff's motion, its counsel stated:

> "All such witnesses are believed by the plaintiff to have evidence material to the issues of this cause, and that the testimony of said witnesses is necessary to establish the alleged violations of the charges and allegations contained in the complaint filed in the above case." (sic)

On January 13, 1964, the plaintiff filed its pre-trial brief reiterating its belief in the importance and essentiality of the testimony of its witnesses as follows:

> [fol. 449] "In the course of proving the facts about the 'industry context' required by the *Brown Shoe* opinion, the Government will call brewer witnesses to testify about the actual competitive situation in the beer industry. This is an invaluable and time honored mode of evidence in antitrust cases where the effect on competition is an issue. See for instance, *United States* v. *Philadelphia National Bank et al., supra,* at pages 367-369. These brewers deserve the close attention of the court not only because of their intimate knowledge of actual competitive conditions, but also because they

represent companies which were the particular object the Anti-Merger Act sought to protect. These witnesses will show that the brewing industry is still, to some extent at least, an industry where control remains in the local community in the independent small company. Some of these witnesses will also testify as to the probable effect of changes in Blatz prices. This is perfectly proper under Section 7 which by its very nature looks to the future as already pointed out by the word 'may.' The Court is called on in deciding these cases to predict the future and to do so must receive all the help it can get from industry representatives. The best source lies in industry experts, men long versed in the problems of breweries. Some of the Government's brewery witnesses in Wisconsin will testify that if Pabst ever cuts either the Pabst or Blatz prices to the level of their own, they would immediately be forced out of business. This is not subject to the objection that it is speculative because it comes from experts and will be received after a proper foundation is laid. We will prove that in other areas other breweries have been adversely affected by the lowering of Pabst or Blatz prices to the level of their own." (Pages 27-28)

* * * * * * *

"The testimony of distributors presented in this case will be generally similar to that approved by the Court of Appeals in *Crown Zellerbach Corporation* v. *Federal Trade Commission,* 296 F. 2d 800 (C. A. 9, 1961) *cert. den.* 370 U. S. 937 (1962). That case involved the merger of two paper producers which resulted in the cutting off of an important source of supply to independent paper jobbers. The court at pages 828-830 discussed at length the testimony of jobbers about how their businesses had been injured by the merger and upheld the Federal Trade Commission's finding of lessening competition." (Page 32)

Also on January 13, 1964, a final conference was held at the request of counsel at which the plaintiff again affirmed its intention to call witnesses and both the plaintiff and

[fol. 450] Pabst agreed to furnish opposing counsel with a list of witnesses to be called each week, and the order of their expected appearance, by Wednesday of the preceding week. An order respecting that agreement was submitted by the parties, and was received and signed by the court on January 20, 1964.

On January 23, 1964, two court days before the trial was to commence, the court received a letter from counsel for the plaintiff, dated January 22, 1964, the day the plaintiff was to furnish its list of witnesses for the first week of trial, which letter stated:

> "Pursuant to the final pre-trial order, the list of plaintiff's witnesses for the week beginning January 27, 1964 is to be furnished to defense counsel on January 22, 1964. As was indicated to some extent at the last pre-trial conference, attorneys for the Government have been assidously attempting to reduce the number of witnesses and thus narrow the issue.
>
> It is now the decision of the Government that this case well lends itself to trial as a purely documentary case with no live witnesses.
>
> The purpose of this letter is to inform the Court and defense counsel of this decision and the resulting sharp curtailment of the length of trial required for the Government's case. We now consider it probable that the Government will rest within two days commencing on January 27, 1964."

No explanation was volunteered by the plaintiff for this drastic change of position regarding the desirability and necessity of testimony of many witnesses to establish its case and only when counsel was pressed for an explanation by the court on April 30, 1964 was any attempt at explanation made. With respect to this matter, we understand the plaintiff's position to be that it decided to call no witnesses at the trial because the state of the law had been clarified recently to the extent that statistics satisfied the plaintiff's burden of proof. We must here note that the [fol. 451] only significant recent clarifications in the merger field prior to January 22, 1964, when the plaintiff

decided to call no witnesses, were *Brown Shoe Co. Inc.* v. *United States* (1962) 370 U. S. 294 and *United States* v. *Philadelphia National Bank, et al* (1963) 374 U. S. 321. Both of these cases were decided long before January 22, 1964 and the familiarity of plaintiff's counsel with them prior to that date is revealed in the plaintiff's pre-trial brief.

The Trial

The trial began on January 27, 1964, at 10:45 A.M., with opening statements. At approximately 2:30 P.M., the plaintiff began presenting its case, that is, offering exhibits and reading portions of depositions. It rested at about 3:45 P.M. the following day, after offering some 260 exhibits, whereupon the defendant Pabst filed a motion to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs with respect to that motion were filed, a hearing was held on April 30, 1964, proposed findings and comments thereon were filed, and the court is now prepared to render its decision.

Pabst and Blatz

When it acquired Blatz in 1958, Pabst already operated four brewery plants, one, the largest, in Milwaukee, Wisconsin, one in Peoria Heights, Illinois, one in Newark, New Jersey, and one in Los Angeles, California. Blatz operated but one plant, in Milwaukee, Wisconsin, which plant was placed on a shut-down status in 1959, with Blatz brand beer being brewed thereafter at the four Pabst plants.

In 1957, the last full year prior to the acquisition, Pabst ranked tenth in sales of beer in the United States with 3.02% of the market and in 1958, its rank was eleventh, with 2.67% of the market. Blatz was the eighteenth largest selling brewery in the United States in 1957 with 1.47% [fol. 452] of the market and the thirteenth largest selling brewery in 1958 with 2.04% of the market. In 1957, Pabst beer, under various brand names was sold throughout the continental United States and Blatz beer was sold in 38 states and in the District of Columbia. In earlier years Blatz beer had been sold throughout the continental United States.

The plaintiff has not satisfied its burden of proving that Wisconsin or the three state area is a relevant geographic market.

Both the plaintiff and Pabst have cited with conviction the following language from the *Brown Shoe* case, in support of their respective positions as to the relevant market area

> "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal legalistic one. The geographic market selected must, therefore, both 'correspond to the commercial realities' of the industry and be economically significant." 370 U. S. 294, at Pages 336-337.

Each maintains strenuously that a proper application of this standard must result in a determination that its position with respect to the relevant geographic market or markets is correct.

Since the parties are agreed that the continental United States is a relevant geographic market, we shall not in this section of our opinion discuss the facts pertaining to that area. We shall discuss separately the pertinent facts regarding the disputed areas of Wisconsin and the three state area of Wisconsin, Illinois and Michigan and our reasons for determining that it has not been proved that either of those areas is a relevant geographic market within which the probable effect of the acquisition of Blatz by Pabst should be tested.[3]

[fol. 453] Wisconsin

Since the repeal of prohibition in 1933, Wisconsin has consistently ranked among the top three states in the production of beer. Statistics presented by the plaintiff on taxpaid withdrawals[4] from 1933 through 1961 and on production from 1935 through 1961 reveal this fact and

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[3] Some variances exist in the exhibits with respect to the statistics hereinafter presented, but it does not appear that the variances are material.

[4] "Taxpaid withdrawals" means the output of breweries on which the federal excise tax of $9.00 per barrel is paid.

reveal that in 1957, Wisconsin ranked second in production and taxpaid withdrawals of beer with over 11,000,000 barrels, in 1958 it ranked first with over 11,000,000 barrels, in 1959 and 1960 it ranked second with over 10,000,000 barrels and in 1961, with taxpaid withdrawals over 10,000,000 and production over 11,000,000 barrels, it again ranked second. From 1957 through 1961, total national taxpaid withdrawals grew from over 84,200,000 barrels to almost 89,000,000, Wisconsin's percentage thereof ranging from 11.45% (1960) to 13.08% (1958), and total national production grew from over 89,300,000 barrels to almost 95,000,000 barrels, Wisconsin's percentage thereof ranging from 11.34% (1960) to 13.18% (1958).

In beer consumption in the United States, Wisconsin ranked either eighth, ninth or tenth for each of the years 1934 through 1961, and its ranking for 1957 through 1961 was ninth.[5] During each of those latter years, over 83,700,000 barrels of beer were consumed nationally, Wisconsin consuming between 3.66% and 3.75% thereof.

From 1935 through 1961, the production of beer in Wisconsin far exceeded Wisconsin consumption of beer. For example, during the years 1957 through 1961, the number of barrels produced and consumed in Wisconsin were:

Year	Barrels Produced	Barrels Consumed
1957	11,735,362	3,066,673
1958	11,868,224	3,112,955
1959	10,737,424	3,198,468
1960	10,589,589	3,267,348
1961	11,198,894	3,303,154

[fol. 454] And the Wisconsin consumer did not limit himself to Wisconsin brewed beer, but drank freely of beers brewed by out of state brewers. It is obvious, therefore, that the great bulk of Wisconsin's production of beer was consumed outside of that state.

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[5] In per capita consumption of malt beverages, Wisconsin's ranking for those latter years was first. In 1961, 39% of the beer sold in Wisconsin, or ten gallons per person was draught beer, and the national average of draught beer sold was 19% of the beer sold, or 2.8 gallons per person. Per capita consumption of draught beer in Wisconsin in that year was higher than in any other state reporting that statistic.

During 1955, beer was sold in Wisconsin by 77 breweries. The number of breweries operated in that state in that year was 43. During 1956, beer was sold in Wisconsin by 74 breweries and 43 breweries were operated in that state. During 1957, beer was sold in Wisconsin by 69 breweries and 38 breweries were operated in that state. During 1958, beer was sold in Wisconsin by 68 or 69 breweries and 38 breweries were operated in that state. During 1959, beer was sold in Wisconsin by 60 breweries and 38 breweries were operated in that state. During 1960, beer was sold in Wisconsin by 58 breweries and 33 breweries were operated in that state. During 1961, beer was sold in Wisconsin by 54 breweries and 33 breweries were operated in that state.

Both before and after the acquisition, Pabst and Blatz found the Wisconsin consumer appreciative of their products. Their rankings in sales and percentages of total beer sales in Wisconsin from 1955 through 1961 were as follows:

	Pabst		Blatz		Pabst-Blatz	
	Rank	% of Wis. sales	Rank	% of Wis. sales	Rank	% of Wis. sales
1955	3rd	10.51%	1st	14.01%		
1956	4th	10.86%	1st	12.72%		
1957	4th	11.14%	1st	12.81%		
1958	4th	10.73%	1st	12.99%		
1959					1st	24.80%
1960					1st	26.14%
1961					1st	27.41%

The total number of barrels sold of Pabst and Blatz nationally and the number sold in Wisconsin for the years 1949 through 1961 were as follows:

[fol. 455]

	Pabst		Blatz	
	National	Wisconsin	National	Wisconsin
1949	4,336,378	302,556	1,545,622	491,626
1950	3,763,395	295,203	1,650,071	574,302
1951	3,901,571	271,682	1,665,281	567,726
1952	4,076,816	301,914	1,551,523	607,589
1953	3,925,757	283,347	989,288	430,285
1954	3,263,033	304,036	923,583	427,609
1955	3,129,452	324,596	907,836	432,510
1956	3,017,552	333,539	937,241	389,410
1957	2,548,452	340,378	1,239,334	388,678
1958	2,254,001	333,244	1,717,489	403,437
(After acquisition)				
1959	2,060,775	374,764	2,133,546	416,322
1960	1,952,130	429,402	2,426,440	424,327
1961	2,667,346	475,490	2,524,716	429,772

[fol. 455] Throughout those years, more Blatz beer was sold in Wisconsin that in any other state, except in the years 1958 through 1961, when Wisconsin sales of Blatz were exceeded by Blatz sales in Michigan. In none of those years except 1960, was Wisconsin the largest state market for Pabst.

In the years 1955 through 1960 the following amounts were spent by Pabst for advertising and promoting of Pabst beer nationally and in Wisconsin:

	National Advertising	Wisconsin Advertising
1955	$7,261,270	$436,427
1956	8,450,316	557,722
1957	8,640,857	787,924
1958	6,309,002	558,751
1959	5,492,752	647,468
1960	5,724,267	779,472

The following amounts were spent by Pabst in 1959 and 1960 for advertising and promoting of Blatz beer:

	National Advertising	Wisconsin Advertising
1959	$4,185,697	$ 986,817
1960	5,113,295	1,001,020

After the acquisition, the price charged distributors in Wisconsin for "Blatz Pilsner" brand beer on packages of twenty-four-12 oz. returnable bottles, F.O.B. brewery, was generally higher than that charged elsewhere.
[fols. 453-455]

[fol. 456] The plaintiff contends that Wisconsin is a relevant market for purposes of this case because (a) prior to the acquisition, the most intense competition between Pabst and Blatz existed in Wisconsin, therefore the impact of the acquisition would be most severe in that state, (b) Wisconsin's standing in the beer industry makes it an appreciable segment of the market, (c) each state is a separate relevant market, since each state has its own regulations affecting the beer industry, (d) Blatz prices are kept higher in Wisconsin than in any other state, and (e) Wisconsin's high per capita consumption of beer, high consumption of draught beer and large number of small, locally owned[6] breweries make it a unique mar-

[6] There is no evidence in the record that any small brewery located in Wisconsin is locally owned.

ket. In support of its position that Wisconsin is a geographic submarket within which the effects of the acquisition may be tested it cites the *Brown Shoe* case, *supra*, the *Philadelphia Bank* case, *supra*, *United States* v. *Bethlehem Steel Corporation and The Youngtsown Sheet and Tube Company* (S.D., N.Y., 1958) 168 F. Supp. 576, *Crown Zellerbach Corporation* v. *Federal Trade Commission* (C.A. 9, 1961) 296 F. 2d 800, *United States* v. *El Paso Natural Gas Co.*, (1964) 376 U. S. 651, and *United States* v. *First National Bank & Trust Co. of Lexington* (1964) 376 U. S. 665. While we agree that in a proper case the effects of a merger or acquisition should be tested in a geographic submarket, we do not believe that the plaintiff has introduced evidence sufficient to prove that the State of Wisconsin is a geographic submarket which corresponds to the commercial realities of the beed industry or is economically significant. In our opinion, all of the cases relied upon by the plaintiff on this issue involved fact situations substantially different from the facts involved in this case.

In both the *Philadelphia Bank* case, where the four-county Philadelphia metropolitan area was held to be the [fol. 457] proper section of the country in which to appraise the merger between the second and third largest banks in that area, and the *Lexington Bank* case[1] where a one county area was held to be the section of the country within which to test the effect of a consolidation of the first and fourth largest banks in that area, the line of commerce discussed by the Supreme Court was commercial banking. The records in both cases established that competition was localized by the factor of inconvenience. As the Supreme Court stated in the *Philadelphia Bank* case,

> "In banking, as in most service industries, convenience of location is essential to effective competition. Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance. See *Transamerica Corp.* v.

[1] This case involved Sections 1 and 2 of the Sherman Act and not Section 7 of the Clayton Act.

> *Board of Govs. of Fed. Res. Sys.*, 206 F. 2d 163, 169 (C.A. 3rd Cir. 1953). The factor of inconvenience localizes banking competition as effectively as high transportation costs in other industries." 374 U. S. 321, at Page 358.

The beer industry is not a service industry and there is no evidence in the record that competition in the beer industry is in any manner localized or affected by location of a brewery. Absent such evidence, neither Bank case is authority here for the proposition that Wisconsin is a relevant geographic market.

The *El Paso Gas* case, cited by the defendant on oral argument, is of no assistance to us. It is not clear that there was even any issue as to whether California was a "section of the country".

The *Brown Shoe* case involved a merger between two companies each of which both manufactured and retailed shoes. With respect to the vertical aspect of the merger, the entire nation was held to be the relevant geographic [fol. 458] market, (370 U. S. 294, at Page 328) as it was with respect to the horizontal aspect of the merger on the manufacturing level, the Supreme Court stating:

> "The parties do not dispute the findings of the District Court that the Nation as a whole is the relevant geographic market for measuring the anticompetitive effects of the merger viewed vertically *or of the horizontal merger of Brown's and Kinney's manufacturing facilities. As to the retail level, however, they disagree.*" 370 U. S. 294, at Page 337. (Emphasis added)

The court's subsequent holding and agreement with the district court that the relevant geographic markets in which to analyze the merger were cities with populations exceeding 10,000 and their environs in which both Brown and Kinney retailed shoes through their own outlets related only to the retail level of the merging companies' operations. The record before us does not reveal that Pabst or Blatz competed or were likely to compete at the retail level through controlled outlets in any area prior to the acquisition. Rather, it appears that their sales of

beer were made primarily through distributors or wholesalers. The breweries' relationship with these distributors and wholesalers has not been revealed, nor has the relationship of retail outlets to either the breweries or the distributors or wholesalers. Absent any evidence as to retail activities on the part of Pabst or Blatz, *Brown Shoe's* rule that on the retail level the effect of the merger involved could be analyzed in local areas or geographic submarkets is of no aid to the plaintiff.

In the *Crown Zellerbach* case, in which the Court of Appeals for the Ninth Circuit held that relevant market area within which the effects of the acquisition by Crown Zellerbach Corporation of the stock and assets of St. Helens Pulp and Paper Company were to be examined was the three state area of Washington, Oregon and California, the record supported a finding that "the great bulk of the domestic sales, of the papers involved, by Crown and St. Helens" (296 F. 2d 800 at Page 816) were [fol. 459] made in that three state area. In 1952, the year before the acquisition, 71.7% of St. Helens' sales of relevant products were in that area and that area was St. Helens' "predominant and outstanding market." (296 F. 2d 800 at Page 817) The record in this case does not reveal that Wisconsin held a comparable position with respect to either Pabst or Blatz beer sales. In 1957, 340,378 of the 2,548,452 barrels of Pabst sold nationally were sold in Wisconsin, and 388,678 of the 1,239,334 barrels of Blatz sold nationally were sold in Wisconsin. While these Wisconsin sales are respectable, they do not approach the 71.7% found in the *Crown Zellerbach* case to constitute the Pacific coast states the predominant and outstanding St. Helens' market. And apparently the evidence in *Crown Zellerbach* revealed that the Pacific coast states were unique, possessing qualities setting them apart as a separate area.[8] No comparable evidence in this case

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[8] The court stated in that case:

"Moreover this three-state market is one which, in the language of the Court of Appeals in American Crystal Sugar Co., supra, was subject to common economic forces; it is an area of extraordinarily rapid population growth, with large and growing

establishes that Wisconsin is a unique market for beer or is to be treated differently, by reason of any peculiar characteristics, from any other area in which beer is sold.

In the *Bethlehem Steel* case, involving a proposed merger between Bethlehem Steel Corporation and The Youngstown Sheet and Tube Company, the court held that the appropriate relevant markets as to four of the [fol. 460] products or lines of commerce involved included, but were not limited to the United States as a whole, a submarket thereof—the northeast quadrant of the United States, a submarket of that submarket—Michigan, Ohio, Pennsylvania and New York, a submarket of that latter submarket—Michigan and Ohio, and two submarkets of the latter submarket—(1) Michigan and (2) Ohio. As to seven other lines of commerce, the appropriate relevant market was held to be the United States as a whole. It appears that the court felt that each of the submarkets mentioned was an appreciable segment of the market within which the merging companies were effective competitors primarily because of the large percentage of total industry shipments and of Bethlehem and Youngstown shipments into those submarkets. We consider it significant that the court stated:

> "Of course, the national market for a product like steel is not the national market which exists for a product like cigarettes." (168 F. Supp. 576 at Page 601)

recognizing, we believe, that the market for a product like cigarettes was fairly uniform throughout the nation, in which case the nation as a whole would clearly be the relevant market area, while the demand for steel, and iron and steel industry products, was localized or concentrated in various industrialized pockets of the nation. We consider that the beer market resembles the cigarette market

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> cities, increasing industrial activities and other growth factors which set it apart from other areas in the west. The availability of alternative water transportation, while little availed of, has operated to furnish peculiarly favorable land carrier rates." (296 F. 2d 800, at Page 817)

more than the steel market in that the record reveals that the use of beer is nationwide, its sales are not limited primarily to states having any particular industry and no state or area can be said to be predominant in the sales or consumption of beer. The market for beer, unlike the market for steel, is not concentrated. We note also that in *Bethlehem Steel*, the northeast quadrant of the United States had 83% of national steel consumption, the four-state area of Michigan, Ohio, New York and Pennsylvania received 48.4% of the total industry shipments of [fol. 461] common finished steel products, Michigan and Ohio received 31.3% of those shipments, Michigan received 18.2% of those shipments and Ohio received 13.1% of those shipments. In contrast, as noted previously, Wisconsin consumed only between 3.66% and 3.75% of the total beer consumed in the nation during the years 1957 through 1961, a rate of consumption which, in our opinion does not set it aside as an area in which the beer market is concentrated.[9]

We find no merit in the plaintiff's contention that Wisconsin is a relevant market area because the most intense competition between Pabst and Blatz before the acquisition existed in Wisconsin. Pabst and Blatz competed throughout the nation as the plaintiff, in claiming that the continental United States is an appropriate section of the country, admits. In 1957, in competing in Wisconsin, they were competing for only 3.66% of the nation's consump-

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[9] In determining the relevant geographic market for the beer industry, we consider sales data, and not production data, to be controlling. As the Supreme Court stated in *Philadelphia Bank*, quoting *Tampa Electric* v. *Nashville Coal Co.*, 365 U. S. 320, the area of effective competition is the market area in which the seller operates and to which the buyer can practicably turn for supplies. Production figures can, of course, be extremely meaningful where evidence reveals that the production locale affects sales, for example, where transportation costs are so high as to limit sales to an area near the place of production, but no evidence in this case establishes that the location of any brewery affects or limits the area in which the seller operates or to which the buyer turns for supplies.

tion. As to that 3.66% segment, it is true, they realized considerable success, Pabst selling 340,378 of its total national sales of 2,548,452 barrels of beer in Wisconsin and Blatz selling 388,678 of its total national sales of 1,239,334 in Wisconsin and Pabst selling 11.14% and Blatz 12.81% of all beer sold in Wisconsin. We cannot say, however, from the fact that Pabst and Blatz beers found acceptance in Wisconsin, that the most intense competition between them existed in that state. We have no basis in the record [fol. 462] for finding that the degree of success attained by the companies reflected the intensity of the competition between them.[10] And, as we noted before, the percentage of Pabst or Blatz sales in Wisconsin did not approach the percentage of St. Helens' sales in the Pacific coast states in the *Crown Zellerbach* case, cited by the plaintiff on this point.

Neither do we agree with the plaintiff's contention that Wisconsin is a significant market area "because of its important position in the beer industry as a whole". (Page 7, Government's Brief In Opposition To Defendant's Motion To Dismiss) In support of this contention, the plaintiff has pointed to production data contained in its exhibits and compared some of the production percentages to consumption percentages in the *Bethlehem Steel* case. Unquestionably, Wisconsin produced and exported a substantial amount of beer before at the time of and since the acquisition of Blatz by Pabst and a sizable number of breweries operated in that state. As we stated previously, however, this production data, while interesting, does not define a relevant geographic market where there is no proof that the place of production in any manner affects sales. Absent such proof, the plaintiff's comparison of Wisconsin beer *production* figures with steel *consumption* figures in the *Bethlehem Steel* case is not apt. As we also stated previously, the figures presented relative to consumption of beer in Wisconsin

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[10] The figures introduced by the plaintiff as to the amounts spent by Pabst and Blatz for national and Wisconsin advertising can be given little weight particularly since no evidence as to Blatz expenditures prior to the acquisition were offered.

are not such as to render Wisconsin a significant market area.

The plaintiff has also argued that Wisconsin (and incidentally every state) is a separate market area in the beer industry because Wisconsin (and every state) is free to regulate that industry and has, in fact, "enacted a complex system of laws which have the effect of making each [fol. 463] state a separate and distinct market for competition in the beer industry." (Page 8, Government's Brief In Opposition To Defendant's Motion To Dismiss) Exhibits introduced in support of this argument establish that states have enacted laws relative to alcoholic content permissible in beer sold within their boundaries, packaging and labelling of beer, etc., which laws must, of course, be respected. The plaintiff admits that the state regulations are common to all breweries and do not make it impossible to sell beer within different states. The fact that beer is sold throughout the United States reveals that the laws of the various states do dot deter competitors. The most that can be said is that all competitors are bound by state regulations, must observe them while engaging in competition, and must and do make appropriate adjustments in their procedures in various states to observe them properly. We do not consider it necessary to discuss the evidence as to state regulations introduced by the plaintiff in detail. The plaintiff has admitted that it has no authority for its position that state regulations create separate market areas and we hold that state regulations, equally burdensome on all competitors, which do not prevent or deter competition, do not perforce render every state, including Wisconsin, a separate market now.

While the plaintiff contends that Pabst has recognized Wisconsin to be a unique market by pricing Blatz beer higher in Wisconsin than elsewhere since the acquisition, during which period more Blatz beer was sold in Wisconsin than in any state except Michigan it has presented proof as to the price of only one type of package and has presented no argument and cited no authority to convince us that this price factor is of any moment in ascertaining the relevant geographic market.

We have also considered the plaintiff's contention that

Wisconsin is a relevant geographic market because it is unique in that its per capita consumption of beer is higher [fol. 464] than any other state, its consumption of draught beer is high and "it is the center of the small, locally owned breweries remaining in this country." (Page 13, Government's Brief In Opposition To Defendant's Motion To Dismiss) We are not satisfied that such uniqueness marks Wisconsin as a separate market area. Despite its high per capita consumption of beer, Wisconsin, with its 3.66% of the nation's consumption of beer in 1957, was not an appreciable segment of the market. And we are not at all certain that per capita consumption statistics relative to a product which, by its very nature, cannot be sold to the population at large, but only to adults, are of any value. They may be of aid in determining consumer characteristics but not in defining a market area. The plaintiff has given no reason for considering draught beer separately in determining a market area. The stipulated line of commerce in this case is the beer industry and we cannot single out or place any reliance on statistics regarding draught beer, a division of the product involved, without sufficient reason. As we have stated previously, the location of production facilities has not been shown to affect the market area. In like manner the location of a number of small competitors in Wisconsin has not been shown to make Wisconsin a relevant geographic market.

We hold that the plaintiff has not shown that Wisconsin as a geographic market corresponds to the commercial realities of the beer industry or is economically significant, nor has it shown that Wisconsin is an appreciable segment of the market in the beer industry.

The Three State Area

After the defendant Pabst filed its motion to dismiss and indicated its intention to press that motion, the court directed the parties to file briefs. Because the plaintiff had [fol. 465] the burden of proof with respect to the only contested issues, it was directed to file the opening brief, disclosing to the court and to the defendant how it claimed

to have satisfied that burden.[11] In its opening brief, its discussion of the facts relative to its position that the three state area is a section of the country within which the effect of the acquisition of Blatz by Pabst should be examined is limited to the following paragraph at Pages 13 and 14:

> "In regard to the three-State area of Wisconsin, Illinois, and Michigan, in which the Government has also asked the Court to measure the effects of the merger, it is sufficient to point out that its importance rests on the same factors that make Wisconsin a relevant market. By adding the States of Illinois and Michigan to Wisconsin, the Court may see the effects of the merger in a larger, therefore more 'appreciable' segment of the national market. In 1957 Pabst made 30.5 percent of its sales in the area (JX 55), and ranked seventh with 5.48 percent of the market (JX 91). In that year Blatz made 66.7 per cent of its sales in the area (JX 55), and ranked sixth with 5.84 per cent of the market (JX 91). Forty-two per cent of the combined sales of the two companies was made in the area (JX 55), and together they ranked second with 11.32 per cent of the market (JX 91)."

No further discussion on this point is contained in its reply brief, nor did the plaintiff amplify its position on oral argument. It appears therefore that the plaintiff itself relies solely on the revelations in Exhibits 55 and 91 as to percentages of Pabst and Blatz sales in the three state area and Pabst and Blatz shares of the market as satisfying its burden of proof and considers no other facts relevant on this issue.

Exhibit 55 reveals that of the 2,548,452 barrels of beer sold by Pabst in the continental United States in 1957, 361,579 barrels were sold in Illinois, 74,928 barrels were [fol. 466] sold in Michigan, and 340,378 barrels were sold

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[11] Some clarification of the plaintiff's position was necessary since most of the exhibits comprising the plaintiff's case had been introduced into evidence with no explanation whatsoever.

in Wisconsin, a total of 776,885 barrels [12] or approximately 30.5% of Pabst's total sales in the continental United States being sold in the three state area. It further reveals that Blatz sold 1,239,334 barrels of beer in 1957, and that 139,707 of those were sold in Illinois, 298,672 in Michigan and 388,678 in Wisconsin, a total of 827,057 barrels,[13] or approximately 66.7% of Blatz's sales in the continental United States, being made in the three state area.

Exhibits 91 and 92 reveal that in 1957, 14,230,609 barrels of beer were sold in the three state area by a total of 104 breweries. Blatz was the sixth largest seller with 5.84% of the market and Pabst ranked seventh with 5.48% of the market.

The plaintiff apparently contends that the bulk of Pabst and Blatz sales occurred in the three state area with the result that the most intense competition between them was in that area, therefore that is a relevant market area. Unquestionably, both Pabst and Blatz were successful in the three state area. However, we find no precedent for permitting the plaintiff to select an area in which the two companies, which competed nationally, realized success and, solely because of that success, designate the area a relevant geographic market. In our opinion, in this case where the companies involved concededly competed nationally, the plaintiff, in order to satisfy its burden of proving that the three state area is a relevant geographic market, must demonstrate something beyond the fact that isolation of that area from the national market would [fol. 467] result in percentages favorable to its position. It must first demonstrate that under the "commercial realities" of the beer industry, Illinois, Michigan and Wisconsin is a relevant market area. No such proof is in the record.

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[12] Exhibit 91 shows sales of 779,234 barrels by Pabst in the three state area in 1957.

[13] Exhibit 91 shows sales of 831,527 barrels by Blatz in the three state area in 1957.

The plaintiff has not satisfied its burden of proving that the effect of the acquisition of Blatz by Pabst may be substantially to lessen competition or to tend to create a monopoly in the beer industry in the continental United States, the only relevant geographic market.

Having held that neither Wisconsin nor the three state area of Wisconsin, Illinois and Michigan is a relevant geographic market, we must now determine whether in the continental United States, the stipulated relevant market area, the effect in the beer industry of the acquisition of Blatz by Pabst may be that prohibited by § 7 of the Clayton Act, which does not prohibit all such acquisitions but only those the effect of which "may be substantially to lessen competition, or to tend to create a monopoly."

The plaintiff has the burden of proving that there is a reasonable probability that the acquisition may have the proscribed effect. In order for the plaintiff to satisfy its burden it must present either evidence sufficient to support a finding that the acquisition, a fait accompli when this action commenced, already had that effect or evidence sufficient to supply a basis for a finding and prediction that a reasonably probable consequence of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the future. As the Supreme Court noted in the *Brown Shoe* case:

> "the very wording of § 7 requires a prognosis of the probable *future* effect of the merger" (370 U.S. 296, at Page 332)

and:

> [fol. 468] "It is the probable effect of the merger upon the future as well as the present which the Clayton Act commands the courts and the Commission to examine." (370 U. S. 294, at Page 333)

In our opinion the evidence introduced by the plaintiff does not satisfy its burden.

The plaintiff appears to contend that it has demonstrated that the acquisition may substantially lessen competition or tend to create a monopoly in the continental United States by (1) statistical evidence as to the market

share controlled by Pabst as a result of the acquisition, (2) statistical evidence showing a trend toward concentration in the brewing industry, and, (3) evidence as to the "vertical effects" of the acquisition on distributors of beer and on maltsters. We shall discuss first the evidence referred to in Points 1 and 2, reserving until later consideration of evidence relating to distributors and maltsters.

In 1934, the first full year of beer production after the repeal of prohibition, there were 714 breweries in the United States. In 1935, the number of breweries increased to a peak of 750 and it thereafter declined so that in 1957 there were 264 breweries and by 1961 the number of breweries in the United States was 229. Thus, during the period from 1935 through 1961 there was a 69.47% decline in the number of breweries operating in the United States. During that same period in the continental United States there was a fairly steady increase in tax paid withdrawals of beer from 39,654,720 barrels in 1934 to 84,288,580 barrels in 1957, to 88,976,417 barrels in 1961. Consumption of beer increased fairly steadily from 35,862,145 barrels in 1934 to 83,779,609 barrels in 1957, to 88,485,795 barrels in 1961, and production of beer increased fairly steadily from 47,735,901 barrels in 1935 to 89,382,923 barrels in 1957, to 94,972,948 barrels in 1961.

[fol. 469] In its exhibits 32 through 46, the plaintiff has listed the breweries selling beer in the United States for each of the years 1957 through 1961,[14] and the ranking of each brewery and its percentage of sales for those years. In 1957, sales of beer were made in the United States by 206 breweries. Twenty-seven breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff made over 5% of sales and two, Ballantine and Hamm, sold more than 4%, but less than 5%. Pabst ranked tenth in sales with 3.02% and Blatz ranked eighteenth with 1.47%, a combined total of 4.49%. The top ten breweries in that year had 45.06% of sales and the top

[14] The number of breweries listed differs from the number shown in Exhibits 212 and 213. No explanation of this variance has been offered. Probably Exhibits 212 and 213 refer to brewing premises while Exhibits 32 through 46 to brewing companies.

twenty-five had 68.99% of sales. In 1958, 191 breweries sold beer in the United States. Twenty-six breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff made over 5% of sales and three, Ballantine, Carling and Hamm sold more than 4% but less than 5%. Pabst ranked eleventh in sales with 2.67% and Blatz ranked thirteenth with 2.04%, a combined total of 4.71%. The top ten breweries in that year had 46.6% of sales and the top twenty-five had 70.71% of sales. In 1959, 177 breweries sold beer in the United States. Twenty-six breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff, made over 5% of sales and four, Carling, Ballantine, Pabst (with the addition of Blatz) and Hamm, sold more than 4% but less than 5%. Pabst, with its acquisition of Blatz, ranked sixth with 4.79%, slightly more than the combined total of the two companies the preceding year. The top ten breweries had 49.51% of sales and the top twenty-five had 73.44% of sales. In 1960, 171 breweries sold beer in the United States. Twenty-seven breweries made 1% or more of the sales, four, Anheuser-Busch, Schlitz, Falstaff and Carling, made over 5% of sales, and three, Ballantine, Pabst(with the addi-[fol. 470] tion of Blatz), and Hamm sold more than 4% but less than 5%. Pabst combined with Blatz ranked sixth with 4.98%. The top ten breweries had 50.75% of sales and the top twenty-five had 74.83% of sales. In 1961, 162 breweries sold beer in the United States. Twenty-five breweries made 1% or more of the sales, six, Anheuser-Busch, Schlitz, Pabst (with the addition of Blatz), Falstaff, Carling and Ballantine, made over 5%, of sales and one, Hamm, sold more than 4% but less than 5%. Pabst combined with Blatz ranked third with 5.83%. This increase in Pabst's rank and market share between 1960 and 1961, the only sizable increase over the combined market share of Pabst and independent Blatz in 1957, has not been connected by the plaintiff in any way with its acquisition of Blatz in 1958. The top ten breweries in 1961 had 52.60% of sales and the top twenty-five had 76.96% of sales.

In 1948, the top ten brewing companies in the United States sold 32.68% of the beer sold in the United States and the top twenty-five sold 49.2%.

Market Shares

It is true, as argued by the plaintiff, that in the *Brown Shoe* case, in discussing the horizontal aspects of the merger involved on the retailing level, the Supreme Court recognized the significance of market shares as a factor in predicting the probable effect of a merger on competition stating:

> "The market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market." (370 U. S. 294, at Page 343)

However, it also stated in discussing the vertical aspects of the merger that:

> [fol. 471] ". . . an important consideration in determining whether the effect of a vertical arrangement 'may be substantially to lessen competition, or to tend to create a monopoly' is the size of the share of the market foreclosed. *However, this factor will seldom be determinative.* If the share of the market foreclosed is so large that it approaches monopoly proportions, the Clayton Act will, of course, have been violated; but the arrangement will also have run afoul of the Sherman Act. And the legislative history of § 7 indicates clearly that the tests for measuring the legality of any particular economic arrangement under the Clayton Act are to be less stringent than those used in applying the Sherman Act. On the other hand, foreclosure of a *de minimis* share of the market will not tend 'substantially to lessen competition.'
>
> *Between these extremes, in cases such as the one before us, in which the foreclosure is neither of monopoly nor* de minimis *proportions, the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive. In such cases, it becomes necessary to undertake an examination of various economic and historical factors in order to determine whether the arrangement under review is of the type Congress sought to proscribe.*" (Emphasis added) (370 U. S. 294, at Pages 328-329)

With respect to the horizontal aspects of the merger on the retailing level, the Supreme Court considered many factors in addition to market shares.

In the *Philadelphia Bank* case, the Supreme Court held that the percentage of the market controlled as a result of a merger may be of such size as to raise an inference that the merger may substantially lessen competition, that "with respect to mergers whose size makes them inherently suspect" (374 U.S. 321 at Page 363) proof of market shares alone on the part of the Government would be sufficient to shift to the opposing parties the burden of proving that the merger is not likely to have anticompetitive effects and that proof of control of 30% of the market as a result of a merger was sufficient to raise an inference that the merger would substantially lessen competition.

The plaintiff apparently realizes that the share of the market controlled by Pabst in the continental United States, which we have held to be the only relevant geographic market, as a result of the acquisition of Blatz [fol. 472] is not itself of such dimensions as to raise an inference that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly In presenting its market share argument in its brief, it concentrates on Wisconsin and to a minor extent on the three state area, and, when it discusses the continental United States, ties this argument in with its second point—that the brewing industry is tending toward concentration, and its third point—the vertical effects of the acquisition. Thus, on Page 18 of its brief in opposition to the motion to dismiss, it argues:

> "In the United States market, Pabst made a phenomenal rise from eleventh place in total sales to third place in three years. Pabst rose from 2,254,001 barrels to 4,194,321 barrels in 1959 and continued upward to 5,192,062 barrels in 1961 and thus more than doubled its sales in that short period of time (JX-35-JX 44, JX 47-JX 59, GX 209)
>
> Just consider what has happening in this market: The eleventh largest United States brewery bought the eighteenth largest and in a space of three years

> became the third largest in sales; from 2.67 per cent of that market it almost doubled its market share to become 4.98 per cent. The effect in these areas is sufficient to establish a probable lessening of competition under Section 7, *especially when considered in conjunction with vertical effects, and the general context of the industry. In an industry containing a number of vulnerable small businesses, which were subject to an accelerating trend toward competition,* [*sic*] the Supreme Court, in the *Brown Shoe* case, found illegal a merger which would have given Brown Shoe Co.[15] control of only 4½ per cent of national shoe production, and 7.2 per cent of the nation's shoe stores." (Emphasis added)

The "phenomenal rise" to which the plaintiff refers was actually an increase in Pabst's market share from 3.02% in 1957 and 2.67% in 1958 to 4.79% in 1959, an increase which can be almost completely accounted for by the addition of Blatz's market share to that of Pabst. This [fol. 473] resultant percentage of the United States market is not in and of itself an "effect . . . sufficient to establish a probable lessening of competition under Section 7." In our opinion, proof that Pabst had a 4.79% of the market after the acquisition in 1959, which percentage had grown to a 5.83% in 1961, is not sufficient to establish that the acquisition is inherently likely to lessen competition under the rule of the *Philadelphia Bank* case, nor that Pabst and Blatz were major competitive factors comparable to the consolidating banks in the *Lexington Bank* case. This is not a case in which the Plaintiff can shift to Pabst the burden of proving the absence of probable anticompetitive effects in the continental United States by proof of market shares alone. We must therefore determine whether the additional documents offered by the plaintiff relative to the probable effect of the acquisi-

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[15] This reference is grossly misleading since in *Brown Shoe* it was held that the merger of Brown's and Kinney's manufacturing facilities with 4% and 0.5% of the market, was economically too insignificant to come within the prohibitions of the Clayton Act.

tion, that is, documents which the plaintiff believes prove a trend toward concentration in the brewing industry and a reasonable probability of anticompetitive vertical effects, present evidence sufficient to put the defendant Pabst to its proof.

Trend Toward Concentration

The only proof in the record relating to the plaintiff's position that the brewing industry has experienced a trend toward concentration is statistical evidence establishing that (1) the number of breweries in the United States has decreased, (2) production, consumption and taxpaid withdrawals of beer have increased, and (3) the percentage of the market shared by the top ten and top twenty-five breweries has increased. This statistical showing absolutely fails to establish a trend toward concentration in the beer industry. In the absence of any showing to the contrary, it must be concluded that all three factors are the result of operation of normal competitive forces, and we do not understand the plaintiff to urge that [fol. 474] in enacting § 7 Congress wished to interfere with those forces.

Our interpretation of the authorities cited by the plaintiff, the *Bethlehem Steel* case, the *Brown Shoe* case, and the *Philadelphia Bank* case, is not that Congress, in enacting § 7, was attempting to stifle or immobilize successful competitors or to secure for those who did not wish to compete or for failing competitors—those who could not compete because of inferior products, management, etc.—a place in the market. Rather, it wished to prevent overzealous competitors from enhancing their positions to the detriment of competition by mergers or acquisitions. The type of concentration § 7 was designed to avoid was concentration resulting from mergers and acquisitions, not increases in market shares resulting from superiority of product or services. Judge Weinfeld stated in the *Bethlehem Steel* case in discussing Congressional intent relative to concentration that the objective of Congress was:

> "to limit further increases in the level of economic concentration *resulting from corporate mergers and acquisitions.*" (Emphasis added) 168 F. Supp. 576 at Page 583.

And at Page 604 of that case, Judge Weinfeld said:

> "A major purpose of section 7 is to ward off the anti-competitive effects of increases 'in the level of economic concentration *resulting from corporate mergers and acquisitions'*. Both the Senate and House Committee Reports emphasized the deep concern of the Congress with the continued trend towards concentration of economic power *through mergers and acquisitions.*" (Emphasis added)

In *Brown Shoe,* the Supreme Court, discussing the trend toward concentration in the shoe industry, spoke not of a mere lessening in the number of competitors but of a history of acquisition by manufacturers of retail [fol. 475] outlets, of combinations and of mergers. In a footnote, the Court said:

> "A company's history of expansion through mergers presents a different economic picture than a history of expansion through unilateral growth. Internal expansion is more likely to be the result of increased demand for the company's products and is more likely to provide increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive acquisitions. Section 7 was enacted to prevent even small mergers that added to concentration in an industry." (370 U. S. 294, at Page 345)

In *Philadelphia Bank* too, the Supreme Court, speaking of a trend toward concentration in commercial banking, referred to a record showing the disappearance during one decade of 1601 independent banks, 1503 of which disappeared as the result of mergers, and to a prior history of mergers in the Philadelphia area.

The plaintiff herein, upon which rests the burden of proof, however, has shown no "trend toward concentration" in the beer industry, as that term has been used in the authorities upon which it relies. So far as the record

discloses, not a single merger or acquisition in the beer industry preceded the acquisition of Blatz by Pabst and the decrease in the number of breweries resulted from the play of natural economic forces. No contrary showing having been made, we must hold that no trend toward concentration has existed in the beer industry.[16]

[fol. 476] Vertical Effects of the Acquisition on Maltsters

In Paragraph 17 of its complaint and in a more definite statement with respect thereto, the plaintiff alleges that malt, a primary ingredient in the brewing process, is produced by Pabst for use in its own breweries and in the manufacture of other products, that prior to its acquisition by Pabst, Blatz purchased its malt requirements from outside sources, that prior to the acquisition Pabst's malt capacity exceeded its own needs, that after the acquisition Blatz brand beer contained only Pabst produced malt and no malt purchased from outside sources and that the acquisition harmed independent malt suppliers by cutting off Blatz as a market and harmed independent breweries by depriving them of a potential supply of Pabst produced malt. In its answer Pabst admits that malt is a primary ingredient in the brewing process and is produced by Pabst for use in its own breweries and in the manufacture of other products, and that prior to the acquisition Blatz purchased its malt from suppliers. The plaintiff was put to its proof on the remaining allegations.

The plaintiff's proof consisted of Exhibits 116 and 117, answers to interrogatories which had been submitted by the plaintiff to Pabst. Exhibit 117 establishes that in 1957 Blatz purchased a total of $2,105,845.05 worth of malt from seven suppliers and in the first seven months of 1958 its malt purchases from eight suppliers amounted to $1,609,037.43. Exhibit 116 establishes that in 1957, Pabst purchased $515,066.78 worth of malt from outside

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[16] Of course the acquisition in question could conceivably violate § 7 even if it were the first in the beer industry. However, since the plaintiff has proved no trend toward concentration we cannot, in determining the probable effect of the acquisition, view it against a backdrop of concentration as the plaintiff urges.

suppliers, in 1958 it purchased $2,277,945.02 worth of malt from outside suppliers and in 1959 it purchased $1,768,-779.17 worth of malt from outside suppliers. Some of the malt purchased in 1958 was purchased at the Blatz premises, but none of the malt purchased in 1959 was [fol. 477] purchased at the Blatz premises.[17]

Nothing in Exhibits 116 or 117 tends to prove the plaintiff's allegations that Pabst's malt capacity prior to the acquisition exceeded its own needs, or that since the acquisition Blatz brand beer has contained only Pabst produced malt. Neither is there any proof that the acquisition harmed independent breweries by depriving them of a potential source of supply for malt from Pabst's malt producing facilities.[18] The plaintiff appears to recognize these deficiencies in its brief since it directs no argument toward those allegations.

It is true as the plaintiff contends that no malt was purchased from independent maltsters for the Blatz plant in 1959. However, Exhibit 116 reveals that Pabst purchases of malt from independent maltsters for its four breweries in 1959 exceeded by over $1,250,000 its 1957 purchases. Since Blatz brand beer was being brewed in Pabst plants in 1959 it is a fair assumption that Pabst had to increase its purchases of malt to brew Blatz brand beer.

The plaintiff states in its brief that it has clearly demonstrated that the maltsters selling malt to Blatz in the eighteen months prior to the acquisition lost the entire market represented by the Milwaukee-Blatz Brewery and that this loss of over two million dollars of business is a [fol. 478] serious matter for them. This argument is a distortion since it ignores the increase in Pabst malt purchases after the acquisition. We do not consider it of any importance that some of the Pabst suppliers of malt

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[17] As stated previously, the Blatz premises went on a shut-down status in 1959. Brewing at that plant ceased prior to February 20, 1959.

[18] There is no indication that Pabst ever sold malt or had the potential to sell it or, if it was a potential source of supply for independent breweries, that the acquisition of Blatz interfered with that potential.

were different from those who formerly supplied Blatz and that some of the former Blatz suppliers sold no malt to Pabst in 1959. Pabst purchased from independent suppliers and as far as the record reveals all were free to compete for its business. Just as Blatz prior to the acquisition could have changed suppliers if it desired, so also Pabst was not bound by any dictates of the Clayton Act to purchase only from former suppliers to Blatz.

The record with respect to maltsters reveals only that independent maltsters sold less malt for brewing Pabst and Baltz brand beers in 1959 than in 1957. On this meager record, unsupported by any testimony, we cannot hold that the impact on independent maltsters of the acquisition was significant. And the facts herein are so dissimilar from those in the *Bethlehem Steel* case relied upon by the plaintiff that no discussion thereof is warranted. We need only say that here the acquired company sold no ingredients (malt-rope wire) to third parties and bought back no finished product (beer-wire rope) from third parties.

We have also considered the rather inconsistent arguments advanced by the plaintiff that (1) suppliers of malt have been adversely affected by the acquisition because Pabst and Blatz, which used to compete in their purchases, no longer compete,[19] and (2) Blatz is now part of an integrated company with a competitive advantage over non-integrated breweries.[20] These arguments are contained in two unenlightening paragraphs at Pages 25 and 26 of the plaintiff's brief in opposition to the motion to dismiss.

[fol. 479] As stated before, the only evidence in the record relative to malt is Exhibits 116 and 117, neither of which in any way defines the malt industry or the nature of competition therein or reveals that there is benefit to a brewer in being integrated as to its supply of malt even if integration be shown. These arguments are based on

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[19] This argument indicates that the plaintiff believes that Pabst's competitive position in purchasing malt has been enhanced.

[20] This argument indicates that the plaintiff believes no malt need be purchased.

nothing but surmise, and manifest no reasonable probability of anticompetitive effects in either the beer industry—the only line of commerce involved herein—or the malt industry.

Vertical Effects of the Acquisition on Distributors

It is the position of the plaintiff that immediately after its acquisition of Blatz, Pabst established a policy of consolidating Pabst and Blatz distributors and that cancellation of a distributor and the throwing of Pabst and Blatz brands into a consolidated distributorship lessens competition in the sale of beer by depriving the cancelled distributor of his source of supply and by lessening the number of competing distributors, thereby lessening competition among distributors.[21] The plaintiff further argues that a potential lessening of competition between distributors occurred in areas where only one brand was distributed prior to the acquisition and where after the acquisition the existing distributor distributed both brands because, absent the acquisition, another distributorship might have been established.

We know from the record that distributors are important since approximately 80% of Pabst beer was sold through them prior to the acquisition and between 75% and 80% of Blatz beer was sold through them both before [fol. 480] and after the acquisition.[22] We also know from the record that "the vast majority" (Page 100 of Transcript) of distributors handle more than one brand of beer. Beyond that we know nothing of the nature and function of distributorships in general—their relationship to breweries they represent, their contract rights, if any, their dependence or lack of dependence upon a particular brand, the nature of competition, if any, among them, the number of distributorships and the number of Pabst and/or Blatz distributorships in existence, etc. With

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[21] The documentary evidence established that eight distributorships were lost by consolidation after the acquisition.

[22] The record does not reveal how the remaining beer was sold.

these glaring voids in the proof, we must hold that the plaintiff has not shown that any probable effect of the acquisition on distributors may be substantially to lessen competition or to tend to create a monopoly in the beer industry.

The facts in the *Bethlehem Steel* case, from which the plaintiff has quoted the following statement as authority for its position:

> "A horizontal merger can affect competition in at least two ways. It can have an impact not only on the competitors of the merged companies but also on the buyers who must rely upon the merged companies and their competitors as sources of supply." (168 F. Supp. 576, at Page 588)

and the facts in *Crown Zellerbach*, which it cited on oral argument, do not resemble those in the case at bar, since beer distributors handle more than one brand of beer and have numerous alternate sources of supply.

Conclusion

In presenting its case, the plaintiff has deliberately chosen to rely on documentary, primarily statistical, evidence and, to a very minor extent, on excerpts from depo- [fol. 481] sitions. It has failed completely to present any information, other than statistics, concerning the structure, history and probable future of the market which would, in the words of *Brown Shoe* "provide the appropriate setting for judging the probable anticompetitive effect of the merger." (370 U. S. 294, at Page 322) It has offered no testimony from either economists or experts in the beer industry in support of its position as to the relevant geographic market. It has failed to produce a single brewer, maltster, or distributor, or any person knowledgeable in this industry, in support of its position that the effect of Pabst's acquisition of Blatz may be that proscribed by § 7. Under these circumstances, and for the reasons heretofore set forth, we must hold that the plaintiff has shown no right to relief. The motion of the defendant Pabst for dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure must therefore be granted.

Counsel for the defendant, Pabst, will prepare findings of fact and conclusions of law pursuant to this Opinion, and submit them to counsel for the plaintiff for approval as to form.

Dated, Milwaukee, Wisconsin, this 22nd day of September, 1964.

Robert E. Tehan, U. S. District Judge.

[fols. 482-483] [File endorsement omitted].

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

UNITED STATES OF AMERICA, Plaintiff

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANT PABST BREWING COMPANY FOLLOWING OPINION OF SEPTEMBER 22, 1964—October 13, 1964.

* * * * * *

[fol. 484] I. JURISDICTION MATTERS; THIS LITIGATION

A. The Parties, the Acquisition, and the Issues

1. Defendant Pabst Brewing Company (hereinafter referred to as "Pabst")* is a corporation organized and existing under the laws of Delaware (Answer, paragraph 3).

2. Defendant Schenley Industries, Inc. (hereinafter referred to as "Schenley") is a corporation organized and existing under the laws of Delaware (Answer, paragraph 4). Prior to July 30, 1958 Schenley wholly owned a subsidiary known as Blatz Brewing Company (hereinafter referred to as "Blatz"). Subsequent to July 30, 1958 the name of this subsidiary was changed to Val Corporation (Answer, paragraph 6).

[fol. 485] 3. On or about July 30, 1958, Pabst acquired the assets and business of Blatz Brewing Company for $11,000,000 in cash (plus adjustments for Blatz profits from May 31 to July 31, 1958), $3,500,000 in debentures, 200,000 shares of its common capital stock and common

* The words "Pabst" and "Blatz" are used generally to describe only the companies, but the words also describe brands of beer sold by the companies and are sometimes used in that sense.

stock purchase warrants for an additional 350,000 shares of such stock (Answer, paragraph 19). Thereafter, Pabst Sales Company, a wholly-owned subsidiary of Pabst, amended its corporate charter, changed its name to Blatz Brewing Company, and on February 27, 1959 was merged into Pabst (Answer, paragraph 6).

4. The complaint was filed by plaintiff, the United States of America, October 1, 1959 and alleged that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in three areas, the United States, the state of Wisconsin, and the three-state area of Wisconsin, Illinois and Michigan, in violation of Section 7 of the Clayton Act (Complaint, paragraph 19). The court was asked to adjudge the acquisition illegal and order Pabst to divest the business and assets of Blatz (Complaint, Prayer for Relief, paragraphs 1 and 2). On May 9, 1960 plaintiff filed a motion for a preliminary injunction which was settled by an agreed order of June 6, 1960.

5. An intensive pretrial program produced considerable agreement among the parties. Prior to the time of trial, it was agreed that the only line of commerce involved is the beer industry, i.e., the production, distribution and sale of beer, and that it did not include the production, sale or distribution of the ingredients of beer nor any sale or distribution of draft or packaged beer as a separate line of commerce (Orders Following Pretrial Con-
[fol. 486] ferences of January 15, 1962 and October 12, 1962). Jurisdiction and venue were admitted by Pabst, as was the fact that both Pabst and Blatz sold beer in interstate commerce prior to the acquisition and Pabst continued to do so thereafter (Answer, paragraphs 1, 2, 8 and 9). The parties had also agreed that the continental United States* as a whole was a relevant section of the country.

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*As used herein the "continental United States" or "United States" or "country as a whole" refers to the forty-eight states and the District of Columbia excluding Alaska and Hawaii. Likewise, the general term "state" includes the District of Columbia but excludes Alaska and Hawaii.

6. Several issues remained, however. Pabst denied that the state of Wisconsin or the three-state area of Illinois, Wisconsin and Michigan was a relevant section of the country as that term is used in Section 7 of the Clayton Act (Answer, paragraphs 13, 14, 16 and 19). Issue was likewise joined as to whether the acquisition might substantially lessen competition or tend to monopoly in any of the alleged sections of the country. Pabst denied all plaintiff's allegations as to probable anti-competitive effects of the acquisition in any of the areas advanced by the plaintiff as relevant (Answer, paragraph 19), alleging rather that the acquisition's purpose was to avoid the consequences of Pabst's declining sales and increasing losses** and its effect was to preserve and promote competition in the beer industry (Answer, paragraph 19).

7. Plaintiff thus had the burden of proving at the trial its allegations that Wisconsin and the three-state area [fol. 487] of Wisconsin, Illinois and Michigan each is a section of the country within which the effects of the acquisition are to be examined; and that, within the continental United States, and, if it sustained its burden of proving Wisconsin or the three-state area a relevant geographic market, within one or both of these areas, the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the beer industry.

B. Pretrial Occurrences

8. After issue was joined, numerous pretrial conferences were held to expedite discovery and prepare this case for trial on the contested issues. It was determined that liability would be decided before any hearing on the type of relief, if any, to be afforded (See Memorandum Decision dated April 7, 1960, page 3). Pursuant to pretrial procedures, plaintiff and Pabst each disclosed to the other party its theory of the case, the documents on which

** Plaintiff's motion to strike this failing enterprise defense contending that the defense was available only to an acquired firm was denied by this court's order of March 31, 1961.

it intended to rely during the trial of the case, the names of the witnesses who would be called, and the nature of the testimony to be expected from each witness. Plaintiff revealed that its representatives had interviewed 208 brewers, 164 distributors and 32 maltsters of whom 71 were listed as witnesses who would testify for plaintiff and who would produce documents at the trial which might be introduced in evidence (Plaintiff's Further Response to Pretrial Order filed January 10, 1962). During the summer of 1962, pretrial subpoenas duces tecum were issued to these 71 witnesses: 39 brewers, 24 distributors and 8 maltsters. Pursuant to these subpoenas, documents concerning the purchase and sale of beer and malt by nearly all of these witnesses, or affidavits in lieu thereof, were made available for examination by both plaintiff's [fol. 488] and Pabst's counsel in Milwaukee (Agreed Order entered April 4, 1962).

9. Based in part on plaintiff's expressed intention to call 71 witnesses, it was estimated that the trial would require approximately two months; and, despite the fact that trial was twice rescheduled between the original pretrial order of May 7, 1963 setting the case for trial on October 14, 1963 and the final trial date of January 27, 1964, no change was made in the time of trial estimate nor in plaintiff's statement of intention to call 71 witnesses.

10. On January 3, 1964, plaintiff and Pabst each petitioned for and was granted authority to issue subpoenas to witnesses residing more than 100 miles from Milwaukee and outside this district. In the plaintiff's motion requesting such order and its pretrial brief filed on January 13, 1964, plaintiff's counsel stated that these witnesses possessed evidence which was material to the issues, and that their testimony was necessary to establish the allegations of the complaint. The court was exhorted to pay close attention to such witnesses at the trial because of their intimate knowledge of actual competitive conditions in the industry and these witnesses were further characterized as the best source of help for the court in predicting the future of the industry resulting from the merger which must necessarily be done in Section 7 cases (Plaintiff's Motion for Subpoenas filed January 3, 1964; Plaintiff's Pretrial Brief filed January 13, 1964, pp. 27-28).

11. At the final pretrial conference on January 13, 1964, plaintiff's counsel reaffirmed its intention to call witnesses and agreed to furnish a weekly list of witnesses and the order of their expected appearance by Wednesday of [fol. 489] the preceding week. The order respecting this agreement was received and signed by the court on January 20, 1964, but on January 23, 1964, two court days before trial was to commence, the court received a letter from the counsel for the plaintiff dated January 22, 1964 stating that the plaintiff would call no witnesses at all at the trial.

C. The Trial

12. The trial began on January 27, 1964 at 10:45 A.M., with opening statements. At approximately 2:30 P.M., the plaintiff began presenting its case, that is, offering exhibits and reading portions of depositions. It rested at about 3:45 P.M. the following day, after offering some 260 exhibits with little or no explanation of the meaning or significance of such exhibits by counsel and without calling a single witness, brewer, maltster, or distributor, or any other witness, to assist the court or to interpret or explain the exhibits and portions of depositions offered in evidence. The defendant Pabst immediately filed a motion to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs with respect to that motion were filed, a hearing was held on April 30, 1964, and proposed findings and comments thereon were also filed prior to the court's opinion of September 22, 1964.

D. Pabst and Blatz

13. At the time of the acquisition of Blatz in 1958, and continuing to date, Pabst has owned and operated breweries located in Milwaukee, Wisconsin; Peoria, Illinois; Newark, New Jersey; and Los Angeles, California (Answer, paragraph 8). The Milwaukee brewery was the [fol. 490] largest and had the greatest capacity (GX 108). Prior to the acquisition, Blatz Brewing Company produced beer at its single plant located in Milwaukee, Wisconsin (Answer, paragraph 9). Early in 1959, the Blatz plant was placed in a shut-down status, but Blatz brand

beer has since been brewed separately at the four Pabst plants (GX 109-110).

14. In every year from 1949 to 1961 beer brewed by Pabst has been sold in every state in the continental United States (JX 47-59). Beer brewed by Blatz in Milwaukee was sold in every state in 1949, 1950, 1951 and 1953, in not less than thirty-seven states in each year from 1954 to 1957, and in forty states in 1958 (JX 47-56). In 1959 and 1960 Blatz beer was sold in every state (JX 57-58) and in 1952 and 1961 Blatz was sold in every state except one (JX 50, 59).

15. Total sales of Pabst beer and Blatz beer in the United States in the years from 1949 to 1961 were as follows:

Year	Pabst	Blatz
1949	4,336,378*	1,545,622
1950	3,763,395	1,650,071
1951	3,901,571	1,665,281
1952	4,076,816	1,551,523
1953	3,925,757	989,288
1954	3,263,033	923,583
1955	3,129,452	907,836
1956	3,017,552	937,241
1957	2,548,452	1,239,334
1958	2,254,001	1,717,489
1959	2,060,775	2,133,546
1960	1,952,130	2,426,440
1961	2,667,346	2,524,716

Source: JX 47-59.

16. The percentage of national taxpaid withdrawals represented by Pabst, by Blatz, and by Pabst and Blatz combined in the years from 1949 to 1961 as well as their respective ranking among brewers in the continental United States in the years from 1957 to 1961 were as follows:

* Unless otherwise stated, industry statistics are in barrels, the volume unit most commonly used in the brewing industry.

[fol. 491]

Year	Pabst %	Rank	Blatz %	Rank	Combined %	Rank
1949.....	5.14		1.83		6.97	
1950.....	4.55		2.00		6.55	
1951.....	4.67		1.99		6.66	
1952.....	4.81		1.83		6.64	
1953.....	4.57		1.15		5.72	
1954.....	3.92		1.11		5.03	
1955.....	3.69		1.07		4.75	
1956.....	3.55		1.10		4.66	
1957.....	3.02	10	1.47	18	4.49	
1958.....	2.67	11	2.04	13	4.71	
1959.....	2.35	13	2.44	11	4.79	6
1960.....	2.22	13	2.76	9	4.98	6
1961.....	3.00	10	2.83	11	5.83	3

Source: JX 6–11, JX 32, 35, 38, 41, 44, 47–59.

[fol. 492] II. The Plaintiff Has Not Satisfied Its Burden of Proving That Wisconsin or The Three-State Area Is a Relevant Geographic Market.

A. Wisconsin

17. Plaintiff failed to provide the court with the testimony of a single representative of the beer industry to explain how or why the state of Wisconsin constitutes a single area of effective competition although twelve Wisconsin brewers appeared on the plaintiff's list of seventy-one proposed witnesses. No testimony of any participant in the beer industry such as a brewer or distributor nor of any witness of any kind was offered which might have been useful to assist the court in determining whether there exists any area of effective competition in beer other than the agreed area, the continental United States.

18. Total taxpaid withdrawals (the output of breweries on which the federal excise tax of $9.00 per barrel is paid) and production (the total output of breweries) of Wisconsin breweries, Wisconsin taxpaid withdrawals and production as a percentage of national taxpaid withdrawals and production, and Wisconsin's rank among states in taxpaid withdrawals and production from 1933 to 1961 were as follows:

Year	Wisconsin Taxpaid Withdrawals			Wisconsin Production		
	Barrels	%	Rank	Barrels	%	Rank
1933.....	3,039,819	14.90	2	Not Available		
1934.....	4,608,201	11.62	3	Not Available		
1935.....	4,867,456	10.85	3	5,207,777	10.91	3
1936.....	5,816,778	11.00	3	6,112,458	10.92	3
1937.....	6,053,157	10.90	3	6,338,141	10.92	3
1938.....	5,570,487	10.86	3	5,764,000	10.79	3
1939.....	5,578,603	10.60	3	5,813,166	10.56	3
1940.....	5,280,492	10.24	3	5,493,999	10.25	3
1941.....	5,975,442	10.54	3	6,345,674	10.59	3
1942.....	7,214,582	11.28	2	7,741,710	11.45	2
1943.....	8,143,833	11.31	2	8,584,969	11.46	2
1944.....	8,366,988	10.58	3	9,420,922	11.04	2
1945.....	8,423,249	10.38	3	9,445,668	10.80	3
1946.....	8,372,237	10.62	3	8,905,076	10.78	2
1947.....	10,453,449	12.02	2	11,204,452	12.25	2
[fol. 493]						
1948.....	10,528,409	12.43	2	11,144,944	12.70	2
1949.....	11,448,463	13.57	1	12,281,394	13.90	1
1950.....	12,009,271	14.52	1	13,085,174	14.86	1
1951.....	12,824,119	15.33	1	14,076,966	15.73	1
1952.....	13,606,635	16.06	1	15,075,934	16.69	1
1953.....	10,749,014	12.51	2	11,567,224	12.57	2
1954.....	10,482,752	12.60	2	11,074,157	12.46	2
1955.....	10,727,842	12.63	2	11,498,019	12.75	2
1956.....	11,128,076	13.10	1	11,938,007	13.23	1
1957.....	11,014,566	13.07	2	11,735,362	13.13	2
1958.....	11,034,403	13.08	1	11,868,224	13.18	1
1959.....	10,119,075	11.56	2	10,737,424	11.54	2
1960.....	10,056,894	11.45	2	10,589,589	11.34	2
1961.....	10,383,561	11.67	2	11,198,894	11.78	2

Source: JX 1–11, 22–31.

19. Wisconsin has ranked eighth, ninth or tenth among the states in the consumption of beer in each year from 1934 to 1961. Wisconsin's consumption in barrels, Wisconsin's consumption as a percent of national consumption, and Wisconsin's rank among states in consumption from 1934 to 1961 were as follows:

Year	Barrels	%	Rank
1934.....	1,702,787	4.75	8
1935.....	1,906,544	4.60	8
1936.....	2,195,411	4.49	8
1937.....	2,295,978	4.40	8
1938.....	2,142,481	4.25	8
1939.....	2,174,457	4.16	8
1940.....	2,114,727	4.13	8
1941.....	2,201,172	3.86	8
1942.....	2,196,510	3.49	10
1943.....	2,425,135	3.45	9
1944.....	2,584,884	3.38	9
1945.....	2,710,444	3.40	9
1946.....	2,805,819	3.49	9
1947.....	3,059,738	3.59	10

Year	Barrels	%	Rank
1948	3,097,385	3.68	9
1949	3,031,960	3.66	9
1950	3,043,925	3.69	9
1951	2,945,593	3.55	9
1952	3,039,323	3.60	9
1953	3,076,497	3.61	9
1954	3,014,087	3.65	9
1955	3,099,655	3.68	9
1956	3,094,919	3.65	9
1957	3,066,673	3.66	9
1958	3,112,955	3.72	9
1959	3,198,468	3.68	9
1960	3,267,348	3.75	9
1961	3,303,154	3.73	9

Source: JX 12-21.

[fol. 494] 20. In 1939 beer was legally sold and consumed in each state in the United States for the first time since before prohibition; in each year thereafter through 1961 beer was in fact sold in every state (JX 13-21). Since 1952 no single state has consumed more than 12.83% of total national consumption (JX 18-21) or accounted for more than 16.06% of national taxpaid withdrawals (JX 7-11). The foregoing tables reveal that from 1935 to 1961 the production of beer in Wisconsin far exceeded Wisconsin consumption of beer in that state. It is obvious, therefore, that the great bulk of Wisconsin's production of beer was consumed outside that state.

21. In the years from 1955 to 1961 the Wisconsin consumer did not limit himself to Wisconsin brewed beer, but drank freely of beers brewed by out-of-state brewers (JX 60-78, GX 257).

22. The number of brewing companies selling beer in Wisconsin and the number of breweries operated in Wisconsin in each year from 1955 to 1961 were as follows:

Year	No. of Companies Selling Beer in Wisconsin	No. of Breweries Operated in Wisconsin
1955	77	43
1956	74	43
1957	69	38
1958	69*	38
1959	60	38
1960	58	33
1961	54	33

Source: JX 60-78, GX 213.

* Pabst and Blatz treated as separate companies.

[fol. 495] The 54 companies selling in Wisconsin in 1961 owned 132 brands (GX 257).

23. The percentage of total Wisconsin sales and the ranking of Pabst, Blatz, and Pabst and Blatz combined among all companies selling beer in Wisconsin from 1955 to 1961 were as follows:

	Pabst		Blatz		Pabst-Blatz	
Year	Rank	% Wis. Sales	Rank	% Wis. Sales	Rank	% Wis. Sales
1955	3	10.51	1	14.01		
1956	4	10.86	1	12.72		
1957	4	11.14	1	12.81		
1958	4	10.73	1	12.99		
1959					1	24.80
1960					1	26.14
1961					1	27.41

Source: JX 60-78.

24. National and Wisconsin sales of Pabst beer and Blatz beer in the years from 1949 to 1961 were as follows:

	Pabst		Blatz	
Year	National	Wisconsin	National	Wisconsin
1949	4,336,378	302,556	1,545,622	491,626
1950	3,763,395	295,203	1,650,071	574,302
1951	3,901,571	271,682	1,665,281	567,726
1952	4,076,816	301,914	1,551,523	607,589
1953	3,925,757	283,347	989,288	430,285
1954	3,263,033	304,036	923,583	427,609
1955	3,129,452	324,596	907,836	432,510
1956	3,017,552	333,539	937,241	389,410
1957	2,548,452	340,378	1,239,334	388,678
1958	2,254,001	333,244	1,717,489	403,437
1959	2,060,775	374,764	2,133,546	416,322
1960	1,952,130	429,402	2,426,440	424,327
1961	2,667,346	475,490	2,524,716	429,772

Source: JX 47-59.

25. More Pabst brand beer was sold in California, Illinois and New York than was sold in Wisconsin in 1949 (JX 47); more Pabst brand beer was sold in California and in Illinois than was sold in Wisconsin in each of the years 1950 to 1957 (JX 48-55); more Pabst brand beer was sold in California than in Wisconsin in 1958, 1959 and 1961 (JX 56-59). Wisconsin was the largest state market [fol. 496] for Pabst in 1960 (JX 58). From 1949 to 1957 more Blatz beer was sold in Wisconsin than any other state: in each year from 1958 to 1961 Michigan ranked first in sales of Blatz beer and Wisconsin ranked second (JX 47-59).

26. The percentage of national Pabst and Blatz sales which were made in Wisconsin in the years 1957-1961 is shown on the following table:

Year	% Total Pabst Sales Which Were Made in Wisconsin	% Total Blatz Sales Which Were Made in Wisconsin
1957	13.36	31.36
1958	14.78	23.49
1959	18.19	19.51
1960	22.00	17.49
1961	17.83	17.02

Source: JX 55-59.

27. In the years from 1955 through 1960 the following amounts were spent for advertising Pabst brand beer in the United States and in Wisconsin. The percentage of these total advertising expenditures made in Wisconsin and the percentage of national Pabst sales made in Wisconsin are also shown below:

Dollars Spent Advertising Pabst

Year	United States	Wisconsin	% of Dollars Spent in Wis.	Wis. % of Total National Pabst Sales
1955	$7,261,270	$436,427	6.01	10.37
1956	8,450,316	557,722	6.60	11.05
1957	8,640,857	787,924	9.11	13.36
1958	6,309,002	558.751	8.85	14.78
1959	5,492,752	647,468	11.78	18.19
1960	5,724,267	779,472	13.61	22.00

Source: JX 53-58, GX 133-134.

28. In the years 1959 and 1960 the following amounts were spent for advertising Blatz brand beer in the United States and Wisconsin. The percentage of these total national advertising expenditures made in Wisconsin and the percentage of national Blatz sales made in Wisconsin are also shown below:

[fol. 497]

Dollars Spent Advertising Blatz

Year	United States	Wisconsin	% of Dollars Spent in Wis.	Wis. % of National Blatz Sales
1959	$4,185,697	$ 986,817	23.58	19.51
1960	5,113,295	1,001,020	19.58	17.49

Source: JX 57-58, GX 135-136.

29. There is no evidence in the record concerning the price of any type of package of Pabst or Blatz beer except the price for 24/12-oz. returnable bottles, f.o.b. brewery; neither is there any record evidence concerning the price of draft beer. The record also lacks any evidence concerning the relative sales volume of 24/12-oz. returnable bottles and the various other packages of beer. After the acquisition the price charged distributors in Wisconsin for Blatz brand beer on packages of 24/12-oz. returnable bottles, f.o.b. brewery, was generally higher than that charged elsewhere (GX 124,256, Tr. 106-107).

30. There is no evidence in the record that competition in the beer industry is in any manner localized (as, for example, by the factor of inconvenience) or affected by the location of a brewery or that the place of production in any manner affects sales or the extent of the market area.

31. From 1935 through 1961 the production of beer in Wisconsin far exceeded Wisconsin consumption of beer. During the years from 1957 through 1961 the number of barrels produced and consumed in Wisconsin were:

Year	Barrels Produced	Barrels Consumed
1957	11,735,362	3,066,673
1958	11,868,224	3,112,955
1959	10,737,424	3,198,468
1960	10,589,589	3,267,348
1961	11,198,894	3,303,154

Source: JX 19-21, 29-31.

[fol. 498] Since the Wisconsin consumer drank freely of beers brewed by out-of-state brewers, it is obvious that the great bulk of Wisconsin's production of beer was consumed outside of Wisconsin.

32. In 1958, the year of the merger, seventeen states produced no beer; nineteen others consumed more beer than they produced; in thirteen states taxpaid withdrawals exceeded consumption. The total consumption and total taxpaid withdrawals for each state in 1958 are shown on the following table:

1958

State	Consumption	Taxpaid Withdrawals
Alabama	502,512	
Arizona	594,270	195,847
Arkansas	340,443	
California	7,002,755	6,535,083
Colorado	716,241	1,574,774
Connecticut	1,271,985	104,395
Delaware	223,003	
Dist. of Columbia	475,646	
Florida	1,930,244	427,149
Georgia	598,663	144,537
Idaho	264,440	31,431
Illinois	5,804,309	3,043,349
Indiana	2,126,174	2,362,627
Iowa	1,237,372	54,864
Kansas	610,725	
Kentucky	1,073,017	1,892,895
Louisiana	1,277,324	2,243,111
Maine	423,617	
Maryland	1,892,262	2,116,041
Massachusetts	2,604,392	1,132,043
Michigan	5,060,694	3,914,576
Minnesota	1,730,142	3,744,515
Mississippi	310,886	
Missouri	2,193,944	6,885,174
Montana	412,293	254,807
Nebraska	720,265	1,011,453
Nevada	190,850	
New Hampshire	338,502	
New Jersey	3,691,776	7,314,520
New Mexico	346,095	
New York	10,208,451	10,731,126
North Carolina	663,568	
North Dakota	264,036	
Ohio	5,197,029	4,382,124
Oklahoma	613,115	31,959
Oregon	771,519	186,554
Pennsylvania	7,121,529	6,714,450
Rhode Island	552,965	888,147
[fol. 499]		
South Carolina	390,318	
South Dakota	233,623	
Tennessee	752,763	
Texas	4,166,218	2,454,542
Utah	225,833	140,468
Vermont	183,554	
Virginia	1,276,507	133,068
Washington	1,361,388	2,631,047
West Virginia	571,501	45,581
Wisconsin	3,112,955	11,034,403
Wyoming	134,115	
Total	83,765,828	84,356,660

Source: JX 9, 20.

33. There is no evidence that Pabst or Blatz competed or were likely to compete at the retail level through controlled outlets in any area prior to the acquisition. Rather, it appears that their sales of beer were made primarily through distributors or wholesalers (Tr. 90). There is no evidence concerning the brewers' relationship with the distributors or wholesalers. Neither is there any evidence with respect to the relations between retail beer outlets and either distributors or brewers.

34. There is no evidence concerning extraordinarily rapid population growth, large and growing cities, increasing industrial activities or growth factors which establish that Wisconsin is an unique market for beer or is to be treated differently from any other area in which beer is sold.

35. Prior to the acquisition of Blatz by Pabst in July, 1958, Pabst brand and Blatz brand beer were advertised and sold in competition with each other (JX 47-56; GX 133-134, Tr. 190) and all other brands of beer throughout the United States (Answer, paragraph 12; JX 32-37).

[fol. 500] 36. While statutes and regulations with respect to the beer industry have been enacted by every state (GX 255-256), these statutes and regulations are common to all breweries and do not make it impossible to sell beer within different states (GX 256). The fact that beer is sold throughout the United States (JX 32-100) reveals that the laws of the various states do not deter interstate shipment of beer into that state by out-of-state brewers (GX 256). None of the regulations prevent a brewer from (1) using ingredients of his own choice in his product, (2) brewing beer by a formula of his own selection, (3) advertising the product to the consumers, (4) selling the product for resale to beer distributors, or (5) selling wherever the brewer elects to sell. For example, between 1957 and 1961 every brewery located in Indiana had sales in Michigan (JX 81-85, GX 257) and Illinois (JX 86-90, GX 257). Not a single regulation from among all those referred to in the evidence relates solely to Wisconsin. The statutes and regulations do not vary appreciably from state to state. Thus, every state permits consumer advertising; thirty-eight states have no regulations with respect to credit between the brewer and distributor;

every state permits the sale of beer in 12-ounce containers, only one prevents the use of 32-ounce containers, and only four prohibit the use of 7-ounce containers; every state permits the sale of beer with an alcoholic content of over 3.2% by weight though nine states limit the alcoholic content to this amount in certain circumstances; and some of the statutes and regulations such as those regulating trading stamps and coupons referred to in GX 140-156 also affect companies in other industries.

37. Wisconsin has a high per capita consumption of beer (GX 264) computed by dividing total Wisconsin beer [fol. 501] consumption by total Wisconsin population, but such statistics are of little value since beer cannot be sold to the population as a whole but only to adults and are of no aid in defining a market area.

38. There is no evidence in the record that any small brewery located in Wisconsin is locally owned.

39. Plaintiff has not introduced sufficient evidence to prove that the state of Wisconsin is a relevant market area which corresponds to the commercial realities of the beer industry.

[fol. 502] B. The Three-State Area

40. Plaintiff failed to provide the court with the testimony of a single representative of the beer industry or any other type of qualified witness to explain how or why the states of Wisconsin, Illinois and Michigan constitute a single area of effective competition. There is no evidence in the record to suggest that competition among brewers is so localized that the area of effective competition involving beer is this narrowly confined.

41. Plaintiff's arguments with respect to the three-state area were limited to only the year 1957 (Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss dated February 24, 1964). In that year the evidence shows that 14,230,609 barrels of beer were sold in this area (JX 91-92); Pabst sales in the area were 779,234 barrels, or 5.48% of total area sales (JX 91); Blatz sales in the area were 831,527 barrels, or 5.84% of total area sales (JX 91); Blatz ranked sixth and Pabst ranked seventh in total sales among the 104 different companies which sold beer in that year in the three-state area (JX 91-92). Pabst sales in this area

were 30.49% of its total national sales and Blatz sales were 66.73% of its total national sales (JX 55). More than half (58%) of combined sales of Pabst and Blatz were made outside that area in 1957 (JX 55) and if combined the two companies would have ranked second with 11.32% of the market in these three states (JX 91). No evidence for any other year nor of any other type has been referred to by plaintiff in its written or oral arguments. Such evidence not only fails to prove that the three states con-
[fol. 503] stitute a separate relevant geographic market, but also is of questionable relevancy in even determining the question since it is more closely related to the issue of competitive effects.

42. There is no evidence in the record which demonstrates that under the commercial realities of the beer industry the three states of Wisconsin, Illinois and Michigan form a relevant market area.

[fol. 504] III. The Plaintiff Has Not Satisfied Its Burden of Proving That the Effect of the Acquisition of Blatz By Pabst May Be Substantially to Lessen Competition Or to Tend to Create a Monopoly in the Beer Industry in the Continental United States, the Only Relevant Geographic Market.

A. Market Shares and Trend Toward Concentration

43. Plaintiff has failed to call as a witness a single representative of the beer industry or any other qualified person to testify as to the probable effect of the acquisition of Blatz by Pabst upon the production, distribution, and sale of beer in the United States. No evidence, other than statistics, was offered by plaintiff as to the "structure, history and probable future" of the beer industry. *Brown Shoe Company* v. *United States*, 370 U.S. 294, 322 (1962).

44. The production of beer in the United States on a commercial scale was reinstituted on April 7, 1933 following enactment of the Cullen-Harrison Act ending a fourteen year era of nationwide prohibition (Answer, paragraph 7). In the calendar year 1935, beer production amounted to 47,735,901 barrels (JX 22); taxpaid withdrawals were 44,867,639 barrels (JX 1); and consumption was 41,476,658 barrels (JX 12). These figures increased appreciably by 1939; by 1947 the 1935 consumption figures were doubled;

these 1947 levels were not again reached until 1959; since 1958 there have been annual increases in these figures; all of which is shown by the following table:

[fol. 505]

Year	Production	TPW	Consumption
1933	Not available	20,400,295	Not available
1934	Not available	39,654,720	35,862,145
1935	47,735,901	44,867,639	41,476,658
1936	55,995,770	52,888,374	48,928,871
1937	58,037,759	55,539,608	52,193,605
1938	53,417,250	51,272,416	50,385,365
1939	55,041,506	52,647,505	52,308,044
1940	53,592,917	51,555,545	51,244,274
1941	59,914,907	56,698,728	56,971,239
1942	67,632,964	63,958,243	62,967,617
1943	74,921,734	72,008,677	70,367,841
1944	85,349,868	79,105,722	76,490,083
1945	87,457,024	81,144,514	79,753,005
1946	82,583,953	78,860,741	80,385,654
1947	91,489,645	86,936,712	85,194,329
1948	87,722,911	84,674,868	84,060,779
1949	88,373,356	84,351,931	82,845,503
1950	88,071,702	82,705,004	82,536,196
1951	89,512,210	83,630,785	83,035,112
1952	90,383,397	84,733,856	84,443,077
1953	92,029,707	85,945,471	85,237,866
1954	88,852,470	83,214,636	82,475,465
1955	90,213,599	84,907,946	84,257,184
1956	90,265,394	84,944,741	84,771,105
1957	89,382,923	84,288,580	83,779,609
1958	90,043,417	84,356,660	83,765,828
1959	93,058,154	87,558,974	86,875,846
1960	93,354,041	87,856,524	87,184,444
1961	94,972,948	88,976,417	88,485,795

Source: JX 1-31.

45. All brewing firms selling more than 1% of sales in the United States in any year from 1957 to 1961, their sales, percentage share of national market and rank are shown below:

1957

Brewery	Barrels	%	Rank
Anh.-Busch	6,115,000	7.25	1
Schlitz	6,023,000	7.15	2
Falstaff	4,300,000	5.10	3
Ballantine	3,981,000	4.72	4
Hamm	3,376,000	4.01	5
Carling	3,150,000	3.74	6
Liebmann	2,966,000	3.52	7
Schaefer	2,940,000	3.49	8
Stroh	2,583,000	3.06	9
Pabst	2,548,452	3.02	10
Miller	2,322,000	2.75	11
Lucky Lager	1,966,000	2.33	12
Schmidt	1,757,000	2.08	13
Ruppert	1,540,000	1.83	14
Piel	1,435,000	1.70	15
Drewry	1,371,000	1.63	16

[fol. 506]

1957

Brewery	Barrels	%	Rank
National	1,301,000	1.54	17
Blatz	1,239,334	1.47	18
Coors	1,146,000	1.36	19
Jackson	1,107,000	1.31	20
Olympia	1,100,000	1.31	21
Duquesne	1,061,000	1.26	22
San Francisco	974,000	1.16	23
Pearl	943,000	1.12	24
Pfeiffer	911,411	1.08	25
Narragansett	881,000	1.05	26
International	843,554	1.00	27

1958

Brewery	Barrels	%	Rank
Anh.-Busch	6,982,022	8.28	1
Schlitz	5,875,000	6.96	2
Falstaff	4,550,000	5.39	3
Ballantine	4,035,529	4.78	4
Carling	3,531,182	4.19	5
Hamm	3,394,206	4.02	6
Schaefer	2,970,000	3.52	7
Liebmann	2,850,000	3.38	8
Lucky Lager	2,361,540	2.80	9
Miller	2,312,701	2.74	10
Pabst	2,254,001	2.67	11
Stroh	1,922,872	2.28	12
Blatz	1,717,489	2.04	13
Schmidt	1,660,909	1.97	14
Drewry	1,527,304	1.81	15
Ruppert	1,450,000	1.72	16
Piel	1,420,000	1.68	17
Coors	1,406,000	1.67	18
National	1,294,000	1.53	19
Olympia	1,249,200	1.48	20
Duquesne	1,035,000	1.23	21
Jackson	1,030,351	1.22	22
Pearl	981,339	1.16	23
Burgermeister	965,500	1.14	24
Narragansett	888,000	1.05	25
Pfeiffer	844,623	1.00	26

1959

Brewery	Barrels	%	Rank
Anh.-Busch	8,027,000	9.17	1
Schlitz	5,860,000	6.69	2
Falstaff	4,868,000	5.56	3
Carling	4,307,000	4.92	4
Ballantine*	4,225,000	4.83	5
Pabst-Blatz	4,194,321	4.79	6

* Pabst sales were 2,060,775 barrels in 1959 and Blatz sales were 2,133,546 barrels. Blatz would have ranked 11th with 2.44% and Pabst 13th with 2.35%.

[fol. 507]

Brewery	Barrels	%	Rank
Hamm	3,670,000	4.19	7
Schaefer	3,026,000	3.46	8
Liebmann	2,785,000	3.18	9
Miller	2,379,000	2.72	10
Lucky Lager	2,243,000	2.56	11
Stroh	2,112,000	2.41	12
Schmidt	1,744,000	1.99	13
Coors	1,647,840	1.88	14
Drewry	1,625,750	1.86	15
Ruppert	1,490,000	1.70	16
Piel	1,460,000	1.67	17
National	1,342,000	1.53	18
Olympia	1,335,000	1.52	19
Duquesne	1,097,000	1.25	20
Jackson	1,025,000	1.17	21
Burgermeister	999,000	1.14	22
Pearl	979,000	1.12	23
Narragansett	939,000	1.07	24
International	927,000	1.06	25
Pfeiffer	899,826	1.03	26

1960

Brewery	Barrels	%	Rank
Anh.-Busch	8,480,000	9.65	1
Schlitz	5,640,000	6.42	2
Falstaff	4,910,000	5.59	3
Carling	4,790,000	5.45	4
Ballantine	4,383,000	4.99	5
Pabst-Blatz*	4,378,570	4.98	6
Hamm	3,907,040	4.45	7
Schaefer	3,101,000	3.53	8
Liebmann	2,690,000	3.06	9
Miller	2,314,000	2.63	10
Lucky Lager	2,168,000	2.47	11
Stroh	2,102,000	2.39	12
Coors	1,907,000	2.17	13
Schmidt	1,811,000	2.06	14
Drewry	1 638,800	1.87	15
Olympia	1,496,895	1.70	16
Piel	1,486,000	1.69	17
National	1,355,000	1.54	18
Ruppert	1,305,000	1.49	19
Duquesne	1,067,000	1.21	20
Pearl	1,026,000	1.17	21
Jackson	1,012,000	1.15	22
Narragansett	941,000	1.07	23
Burgermeister	931,000	1.06	24
International	918,000	1.04	25
Pfeiffer	917,804	1.04	26
Lone Star	895,111	1.02	27

* Pabst sales were 1,952,440 barrels in 1960 and Blatz sales were 2,426,440 barrels. Blatz would have ranked 9th with 2.76% and Pabst 13th with 2.22%.

[fol. 508]

Brewery	1961 Barrels	%	Rank
Anh.-Busch	8,500,000	9.55	1
Schlitz	5,775,688	6.49	2
Pabst-Blatz*	5,192,062	5.83	3
Flastaff	5,120,000	5.75	4
Carling	5,047,323	5.67	5
Ballantine	4,510,000	5.06	6
Hamm	3,714,144	4.17	7
Schaefer	3,286,550	3.69	8
Liebmann	2,987,146	3.35	9
Miller	2,706,806	3.04	10
Coors	2,303,000	2.59	11
Lucky Lager	2,238,000	2.51	12
Stroh	2,029,300	2.28	13
Schmidt	1,854,842	2.08	14
Olympia	1,558,000	1.75	15
Drewry	1,457,812	1.64	16
Pearl	1,429,068	1.60	17
National	1,375,000	1.54	18
Piel	1,360,000	1.53	19
Ruppert	1,200,000	1.35	20
Narragansett	1,094,000	1.23	21
Duquesne	1,007,261	1.13	22
Jackson	964,100	1.08	23
Pfeiffer	930,073	1.04	24
Lone Star	901,505	1.01	25

Source: JX 32-46.

46. The combined market share of Pabst and Blatz brands for the years 1957 to 1960 was less than the 5.14% share of Pabst alone in 1949 (JX 6, JX 47) and the combined market share for Pabst and Blatz in 1961 was but 5.83% (JX 44). The combined market share of Pabst and Blatz is not of sufficient significance to infer a probability of a substantial lessening of competition or tendency to monopoly and thus shift to Pabst the burden of proving the absence of anti-competitive effects as in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 363 (1963). The market share figures of Pabst and Blatz are not of such size that Pabst and Blatz can be characterized as major competitive factors comparable to the consolidating banks in *United* [fol. 509] *States* v. *First National Bank & Trust Co. of Lexington*, 376 U.S. 665 (1964).

47. The number of brewing companies selling beer in the

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* Pabst sales were 2,667,346 barrels in 1961 and Blatz sales were 2,524,716 barrels. Pabst would have ranked 10th with 3.00% and Blatz 11th with 2.83%.

United States and those selling over 5%, 4% and 1% of national taxpaid withdrawals in the years from 1957 to 1961 were as follows:

Year	Total Selling	No. Selling Over 5%	No. Selling Over 4%	Number Selling over 1%
1957	206	3	5	27
1958	191	3	6	26
1959	177	3	7	26
1960	171	4	7	27
1961	162	6	7	25

Source: JX 32–46.

48. The number of brewery premises operated in the United States in various years since 1933 is shown on the following table:

Year	Number
1934	714
1935	750
1939	653
1945	468
1949	440
1957	264
1958	252
1959	244
1960	229
1961	229

Source: GX 212, 213.

In its complaint (Paragraph 7) plaintiff alleged that the decrease in the number of breweries was due to "merger, consolidation, and natural attrition," but no evidence of any kind was offered by the plaintiff as to any reason for the decrease in number of breweries or as to whether the decrease was accounted for by mergers or acquisitions or as to why any brewery may have ceased operations. [fol. 510] There is no evidence in the record of any merger or acquisition in the beer industry other than the acquisition of Blatz by Pabst.

49. The percentage of national sales represented by the leading members of the brewing industry in the years from 1957 to 1961 was as follows:

Year	Industry Leader	Top 2 Firms	Top 3 Firms	Top 4 Firms	Top 10 Firms	Top 25 Firms
1957	7.25	14.40	19.50	24.22	45.06	68.99
1958	8.28	15.24	20.63	25.41	46.06	70.71
1959	9.17	15.86	21.42	26.34	49.51	73.44
1960	9.65	16.07	21.66	27.11	50.75	74.83
1961	9.55	16.04	21.87	27.62	52.60	76.96

Source: JX 32–46.

In 1948 the ten and twenty-five leading breweries in the United States accounted for 32.68% and 49.2%, respectively, of national taxpaid withdrawals (GX 210, 211). No evidence was introduced to explain the relevancy or significance as measures of concentration of figures introduced by the plaintiff concerning the shares of industry sales in the United States which were made by the top ten or the top twenty-five brewers.

[fol. 511] B. Vertical Effects of the Acquisition on Maltsters

50. Plaintiff failed to provide the court with the testimony of a single representative of the malt industry or any other qualified witness to explain how the acquisition of Blatz by Pabst would affect competition in any alleged relevant market, or what effect the acquisition might have on competition in malt. Plaintiff failed to introduce into evidence any of the eight affidavits in its possession showing the production and sale of malt by eight independent malting companies even though the authenticity or genuineness of these affidavits was stipulated to by the parties in the form of an agreed order (Order entered May 29, 1962).

51. Nothing in the record tends to prove the plaintiff's allegations that Pabst's malt capacity prior to the acquisition exceeded its own needs, or that since the acquisition Blatz brand beer has contained only Pabst produced malt. Neither is there any proof that the acquisition harmed independent breweries by depriving them of a potential source of supply for malt from Pabst's malt producing facilities.

52. Plaintiff offered no evidence of total malt industry sales in any year, total malt sales to the brewing industry in any year or of malt sales to any person, firm or corporation other than Pabst and Blatz. Nor was evidence offered of the total amount of sales by maltsters who sold to Pabst or Blatz or the reasons for any changes, if any, in malt purchases by Pabst after the acquisition of Blatz. Further, there was no evidence defining the malt industry or the nature of competition therein or which [fol. 512] reveals that there is benefit to a brewer in being integrated as to its supply of malt even if integra-

tion be shown. There is no evidence that Blatz sold malt to third parties or purchased beer from third parties prior to its acquisition by Pabst.

53. Purchases of malt by Pabst increased from $515,066 in 1957 to $1,768,779 in 1959 (GX 116), an increase of about $1,250,000. Pabst malt purchases in 1958 were $2,277,945 (GX 116). Blatz malt purchases were $2,105,845 in 1957 and $1,609,037 in 1958 (GX 117). Seven companies sold malt to Blatz in 1957 and eight in 1958 (GX 117). Blatz did not make more than 25% of the dollar value of its malt purchases from any one company in either 1957 or 1958 (GX 117). In 1959 Pabst bought malt from eleven different malting companies (GX 116) for use at each of its four plants where Blatz as well as Pabst brand was being produced (GX 110, 116). Brewing ceased at the Blatz brewery prior to February 20, 1959 (GX 109).

C. Vertical Effects of the Acquisition on Distributors

54. Plaintiff did not call a single beer distributor witness to aid the court in determining what effect, if any, the acquisition of Blatz by Pabst has had, or in reasonable probability will have, upon the sale or distribution of beer in any alleged relevant market. The evidence offered concerning distributors related only to nine out of 600 to 900 Pabst brand distributors (Tr. 95-96) and an unknown number of Blatz distributors. These nine distributors were located in the cities of Chicago, Illinois; Battle Creek, Bay City, and Lansing, Michigan; and Durham, Fayetteville, and Wilmington, North Carolina (GX 137, 157-185).

[fol. 513] 55. The record contains no evidence concerning the nature and function of distributorships in general—their relationship to breweries they represent, their contract rights, if any, their dependence or lack of dependence upon a particular brand, the nature of competition, if any, among them, the number of distributorships and the number of Pabst and/or Blatz distributorships in existence, etc., except as stated in Findings 54 to 57.

56. Approximately 80% of Pabst beer was sold through

distributors prior to the acquisition (Tr. 90). Between 75% and 80% of Blatz beer was sold through distributors both before and after the acquisition (Tr. 90). The vast majority of distributors handle more than one brand of beer (Tr. 100). There are many alternate sources of supply for beer distributors, for example, in 1961 there were at least 162 brewing companies selling over 400 brands of beer (JX 44, GX 257).

57. Pabst did not have a policy of consolidating distributors in a single location; the company policy was to save brands, if possible, in the location where they were established at the time of the merger and of consolidating brands, if necessary, to save a distributor or obtain new representation where previously the brand had not been represented (Tr. 96-99, 190-195, GX 267).

D. Summary

58. Plaintiff's evidence has consisted of documentary, primarily statistical, evidence and, to a very minor extent, excerpts from depositions. Plaintiff has failed to present any evidence, other than statistics, concerning the [fol. 514] structure, history and probable future of the market. It has offered no testimony from either economists or experts in the beer industry in support of its position as to the relevant geographic market. It has failed to produce a single brewer, maltster, or distributor, or any person knowledgeable in this industry, in support of its position that the effect of Pabst's acquisition of Blatz may be that proscribed by Section 7.

59. Plaintiff's evidence of market shares, trend toward concentration, and vertical effects of the acquisition on distributors and maltsters does not provide the basis for concluding that the acquisition of Blatz by Pabst has had, or in all reasonable probability will have, the effect of substantially lessening competition or tending to create a monopoly in the beer industry in the United States. In sum, plaintiff has failed to sustain its burden of proving that Section 7 of the Clayton Act, 15 U.S.C. § 18, has been violated.

[fol. 515] Conclusions of Law

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25.

2. The only line of commerce for purposes of this case is the beer industry, i.e., the production, distribution and sale of beer.

3. The continental United States is the relevant section of the country in which the competitive effect of this acquisition must be judged.

4. Plaintiff has failed to meet its burden of proving that either Wisconsin or the combination of the three states of Wisconsin, Illinois and Michigan is a relevant section of the country within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. Plaintiff has failed to meet its burden of proving that in the continental United States the effect of the acquisition of the assets of the Blatz Brewing Company by Pabst Brewing Company may be substantially to lessen competition or to tend to create a monopoly in beer.

6. The motion of the defendant, Pabst Brewing Company, for dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure must therefore be granted.

• • • • • • •

[fol. 516] Respectfully submitted, /s/ John T. Chadwell. /s/ Glenn W. McGee. /s/ Ray T. McCann. /s/ David A. Nelson, Attorneys for Defendant, Pabst Brewing Company.

Chadwell, Keck, Kayser, Ruggles & McLaren, 135 South LaSalle Street, Chicago, Illinois 60603, RAndolph 6-2545.

Ray T. McCann, 152 West Wisconsin Avenue, Milwaukee 3, Wisconsin, BRoadway 6-3565, Of Counsel.

Dated: October 9, 1964.

Approved as to form:

Bertram M. Long, Attorney, Department of Justice.

Dated, Milwaukee, Wisconsin, this 13th day of October, 1964.

Robert E. Tehan, U. S. District Judge.

[fol. 517] [File endorsement omitted.]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 59 C 215

UNITED STATES OF AMERICA, Plaintiff,

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, Defendants.

FINAL JUDGEMENT OF DISMISSAL—October 13, 1964

Plaintiff, the United States of America, having duly presented all its evidence in support of its complaint and having duly rested on January 28, 1964, the defendant, Pabst Brewing Company, having filed a motion for judgment of dismissal pursuant to the provisions of Rule 41(b) of the Federal Rules of Civil Procedure on the ground that, upon the facts and the law, plaintiff has shown no right to relief; briefs in opposition to and in support of the motion having been filed, and a hearing on said motion having been held, and the Court having considered the pleadings, all of the evidence in the record, the briefs, and the arguments of defendant Pabst Brewing Company and plaintiff, and being fully informed, and having on September 22, 1964 filed its Opinion with respect to said motion, and having on the date hereof filed its Findings of Fact and Conclusions of Law,

Now Therefore, It Is Ordered, Adjudged, and [fol. 518] Decreed in accordance with the aforesaid Opinion, Findings of Fact and Conclusions of Law:

1. That the motion of defendant Pabst Brewing Company for judgment of dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure is hereby granted.

2. That the complaint filed herein by the plaintiff, the United States of America, against Pabst Brewing Com-

pany, Schenley Industries, Inc. and the Val Corporation is hereby dismissed with prejudice.

Dated, Milwaukee, Wisconsin this 13th day of October, 1964.

Enter: Robert E. Tehan, United States District Judge.

Approved as to form:

/s/ Bertram M. Long, Attorney for Plaintiff.

/s/ John T. Chadwell, Attorney for Defendant, Pabst Brewing Company.

[fol. 519] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted.]

Civil Action No. 59 C 215

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 11, 1964

I. Notice is hereby given that the plaintiff, United States of America, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on October 13, 1964, dismissing the complaint at the close of the government's case under Rule 41(b), F. R. Civ. P.

This appeal is taken pursuant to 15 U.S.C. 29.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include therein the entire record before the District Court, including all papers filed with the Clerk of the Court in this proceeding, the transcript of the trial proceedings, all exhibits submitted by the parties and this notice of appeal.

III. The question presented by this appeal is whether the government met its burden of establishing that the acquisition by Pabst Brewing Company of the business and assets of the Blatz Brewing Company violated Section 7 of the Clayton Act, so that the District Court erred in dismissing the complaint at the close of the government's case.

/s/ Robert B. Hummel. /s/ Irwin A. Seibel, Attorneys, Department of Justice, Washington, D. C. 20530.

[fol. 520] Certificate of Service omitted in printing.

[fol. 521] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 522] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1965

UNITED STATES, Appellant,

v.

PABST BREWING COMPANY, et al.

Appeal from the United States District Court for the Eastern District of Wisconsin.

ORDER NOTING PROBABLE JURISDICTION—November 8, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. ——

UNITED STATES OF AMERICA, APPELLANT

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 1a–40a) is reported at 233 F. Supp. 475. Its findings of fact and conclusions of law are reproduced in Appendix B, *infra*, pp. 41a–74a. An earlier phase of the litigation is reported at 183 F. Supp. 220.

JURISDICTION

The final judgment of the district court was entered on October 13, 1964 (Appendix C, *infra*, pp. 75a–76a). The notice of appeal was filed on December 11, 1964. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Con-*

tinental Can Co., 378 U.S. 441; *United States* v. *duPont & Co.*, 353 U.S. 586.

QUESTIONS PRESENTED

The ultimate question presented is whether the government's evidence established prima facie that the acquisition of Blatz Brewing Company by Pabst Brewing Company violated Section 7 of the Clayton Act. That question, in turn, involves the following subsidiary questions:

1. Whether, in considering the impact upon competition of a merger which eliminated a substantial competitor, the court erred in disregarding a marked industry trend toward concentration on the ground that it had not been shown to have resulted from prior mergers rather than from natural economic forces.

2. Whether the district court erred in holding that the only relevant market was the national market, and in refusing to accept shares of sales relating to Wisconsin and adjoining areas as more accurately reflecting the anticompetitive consequences of the merger.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in

any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

STATEMENT

1. INTRODUCTION

On July 30, 1958, Pabst Brewing Company ("Pabst") acquired from Schenley Industries, Inc. the assets and business of Blatz Brewing Company ("Blatz") for $11,000,000 in cash, $3,500,000 in debentures, 200,000 shares of Pabst common stock and purchase warrants for an additional 350,000 shares of such stock (Fdg. 3).[1]

On October 1, 1959, the government filed a complaint charging that the acquisition violated Section 7 of the Clayton Act, because its effect may be substantially to lessen competition or tend to create a monopoly in the production and sale of beer in the United States, and in two geographic submarkets: the State of Wisconsin, and the three-State area of Wisconsin, Illinois and Michigan. The issues framed by the pleadings and by agreement of the parties were (1) whether the acquisition had the alleged anti-competitive effects in any of the suggested geographic

[1] Blatz had been a wholly-owned subsidiary of Schenley Industries, Inc. Subsequent to the acquisition, the name of this subsidiary was changed to Val Corporation (Fdg. 2). Val Corporation and Schenley Industries, Inc., were joined and retained in the action as defendants for purposes of relief. See *United States* v. *Pabst Brewing Company*, 183 F. Supp. 220.

markets, and (2) whether either Wisconsin or the three-State area was a relevant section of the country.[2]

The government's proof rested on documentary evidence.[3] At the close of the government's case, the district court granted Pabst's motion to dismiss under Rule 41(b), F.R. Civ. P., on the ground that upon the facts and the law the government had shown no right to relief.

2. The Beer Industry

Ever since the end of prohibition in 1933, the beer industry has shown a marked trend toward concentration, with the largest brewers controlling a progressively increasing share of the market. In 1934, there were 708 brewing companies in the United States. This number declined steadily to 206 in 1957 and 162 in 1961.[4] During the same period, consumption more than doubled, rising from about 41 million barrels in 1935 to about 84 million barrels in 1957. By 1961, consumption had increased by roughly another 5 million barrels (Fdg. 44). Thus, from 1934 to 1961, about 77 percent of the brewing companies, or better than 3 out of every 4, had disappeared from the market, while consumption had more than doubled.

Concurrently, there was a sharp rise in the share of the market held by the leading brewers. The top

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[2] Pabst also raised a "failing company" defense, alleging that it acquired Blatz to avoid the consequences of its own declining sales and increasing losses. The court, however, did not reach this issue.

[3] Except for brief excerpts from depositions and correspondence, the evidence was entirely statistical in character.

[4] Figures for 1957–1961 are included in Fdg. 47; earlier figures are computed from GX 216–236.

25 companies, which in 1942 accounted for 42.2 percent of sales, increased their share to 68.99 percent in 1957 and 76.96 percent in 1961 (GX 210). None of the other 137 companies in the industry accounted for more than one percent of sales and together they accounted for only 23.04 percent (JX 44).

3. The Merging Companies

In 1957, the last full year prior to the acquisition, Pabst ranked tenth in sales of beer in the United States with 3.02 percent (more than 2½ million barrels) of the market.[5] Blatz ranked eighteenth with 1.47 percent (almost 1¼ million barrels). Pabst emerged from the acquisition as the nation's fifth largest brewing company (the four leaders having market percentages ranging from 4.72 percent to 7.25 percent). By 1961, the last year for which figures are in the record, Pabst was the third ranking seller nationally, accounting for 5.83 percent of sales (more than 5 million barrels). The first and second leading sellers that year accounted respectively for 9.55 and 6.49 percent of total sales (Fdg. 45, JX 32, 44).

At the time of the acquisition (as today) Pabst owned and operated four breweries: the largest in Milwaukee, Wisconsin, and the others in Peoria Heights, Illinois, Newark, New Jersey, and Los Angeles, California. Although Pabst beer was sold throughout the country, the three leading States for

[5] One barrel is the equivalent of 31 gallons. See § 5051 of the Internal Revenue Code of 1954, as amended by § 201, Excise Tax Technical Changes Act of 1959, P.L. 85–859, 72 Stat. 1333 (26 U.S.C. (1958 ed., Supp. V) 5051); § 245.113, Treasury Regulations on Beer (26 CFR 245.113).

its sales during the nine-year period preceding the merger (1949–1957) were those in which it had breweries—California, Illinois and Wisconsin (JX 47–55)—while New York, across the river from Pabst's Newark brewery, ranked fourth. Pabst's sales in these four States averaged about 50 percent of its total national sales (JX 47–55). Its sales in Wisconsin ranged between 7 to 13 percent of its total sales (computed from Fdgs. 24, 25; JX 47–55).

The only brewery owned by Blatz was located in Milwaukee, Wisconsin; its operations were totally discontinued in February 1959 after the merger and the plant was placed on a "shut down" status. Thereafter, Pabst sold Blatz brand beer but brewed it at Pabst plants (Fdg. 13). Although prior to the acquisition Blatz beer was sold in most States (Fdg. 14), a substantial segment of its sales was concentrated in the area surrounding its brewery in Milwaukee. In the period 1949–1957, from 31 to 46 percent of its sales were made in Wisconsin, more than in any other State (computed from Fdgs. 24, 25; JX 47–55), and from 55 to 73 percent were made in the contiguous three-State area of Wisconsin, Illinois, and Michigan (JX 47–55).

4. The Wisconsin Area

Since the repeal of prohibition in 1933, Wisconsin has consistently ranked among the three leading States in the production of beer; since 1946, it has never ranked lower than second (Fdg. 18; JX 22–31). In the period 1953–1961, it annually produced between 11 million and 12 million barrels; *i.e.*, from

11 percent to 13 percent of the national total (Fdg. 18, JX 22–31). Wisconsin had the largest surplus of beer production of any State; it perennially produced between three and four times as much as it consumed (JX 17–21, 26–31).

In consumption of beer, Wisconsin had the highest per capita average of any State (App. A, pp. 9a, 21a). Since 1948, it has consistently ranked ninth among the States in total consumption, annually accounting for about 3 million barrels (3.55 to 3.75 percent of the national total) (JX 16–21). In the three years preceding the merger, from 77 to 81 percent of the beer sold in Wisconsin was purchased from companies operating breweries within the State (computed from JX 19, JX 60–68, GX 257).[6]

The high rate of attrition experienced by brewers, taking the beer industry in the nation as a whole, was also observable in Wisconsin. In the period 1955–1961, the number of companies selling beer in Wisconsin declined from 77 to 54—30 percent—and the number of brewing plants operated within the State fell 21 percent from 43 to 33 (Fdg. 22; JX 60–78, GX 213). During the same period, Wisconsin's consumption rose by approximately 10 percent (from 3 to 3.3 million barrels) (Fdg. 19; JX 19–21). Meanwhile, largely as a result of the Pabst-Blatz merger itself, the share of the market held by the leading sellers substantially increased.

[6] Of the remaining beer sold in Wisconsin, Hamm Brewing Company accounted for about half (JX 60, 63, 66). It has a plant in St. Paul, Minnesota, just across the Wisconsin line (GX 257).

In 1957, the last full year prior to the acquisition, the top four firms each had approximately the same share of Wisconsin sales. Blatz was the leading seller with 12.81 percent, and Pabst ranked fourth with 11.14 percent (Fdg. 23, GX 186, JX 66). Their combined share gave Pabst control of 24 percent of the Wisconsin market, almost twice that of the nearest rival (GX 186, JX 66). By 1961, the combined share had increased to nearly 27.5 percent, more than 2.25 times that of the nearest rival (GX 190, JX 78).

Prior to the acquisition in 1957, the leading seller in Wisconsin held 12.81 percent of the market; the two leading sellers, 24.96 percent; and the top three, 36.60 percent. Giving effect to the acquisition, Pabst would account for 23.95 percent (moving from fourth to first); and the two leading companies would account for 36.10 percent, while the top three would account for 47.74 percent (GX 186). Thus, the increase in concentration by the leading firm would be 87 percent; by the two leading firms almost 45 percent; while the top three would achieve an increase in concentration of over 30 percent.[7]

[7] The trend toward further concentration continued after the acquisition. The following table shows the shares of the leading sellers in 1957, on a projected basis, as compared with 1961 (GX 186, 190):

	1957	1961	Percentage increase in 1961 over 1957
Top	23.95	27.41	14.4
Top 2	36.10	39.38	9.1
Top 3	47.74	50.26	5.2
Top 4	53.55	58.62	9.5
Top 5	57.41	66.79	15.4
Top 6	61.91	72.51	17.1

As indicated above, Wisconsin was "home territory" for both merging companies and accounted for a substantial part of their business.

5. The Three-State Area

Wisconsin and the adjoining States of Illinois and Michigan, accounted in 1957 for more than 14 million barrels, or about 16.5 percent, of all beer sold in the country (JX 19). This area also witnessed a decline in the number of selling companies and the concurrent rise in the proportion of the sales made by the leading brewers. In 1957, 104 firms sold in the area and eight of them accounted for 59 percent of the total sales (GX 204). Four years later, in 1961, there were only 86 companies selling in these States and the share held by the eight leaders had risen to 68 percent (GX 208). This decline in the number of sellers occurred notwithstanding a slight increase in the total volume of sales (JX 92–100).

From 1949 to 1957 (the last full year prior to the acquisition), between 55 and 73 percent of Blatz's total sales and about 30 percent of Pabst's sales were made in the three-State area (JX 47–55). In 1957, Blatz was the sixth leading seller with 5.84 percent of the sales, and Pabst ranked seventh with 5.48 percent. In 1958, the year of the merger, Blatz ranked fourth with 7.70 percent and Pabst seventh with 4.98 percent (GX 204–205). Together they had 11.32 percent of the sales in 1957 (about the same share as the leading seller in the area) and 12.68 percent in 1958 (2 percent more than the leader) (*ibid.*). By 1961, Pabst's

share had increased to 15.07 percent, about 50 percent more than its nearest rival (GX 208).

6. The Decision of the District Court

The district court held that neither Wisconsin nor the three-State area is a "section of the country" within the meaning of Section 7 of the Clayton Act. In holding that Wisconsin is not a relevant market (App. A., *infra*, pp. 8a–22a), the court stated, *inter alia*, that the amount of beer consumed in that State—3.66 percent of the nation's total—was not large enough to make it a commercially significant market; that the high degree of success attained by the merging companies in Wisconsin did not necessarily reflect "the intensity of competition between them" which the merger ended; that beer was freely imported into and exported out of Wisconsin; that evidence of heavy production in Wisconsin, both by the merging companies and others, was without significance, since "there is no evidence * * * that competition in the beer industry is in any manner localized or affected by the location of a brewery" (Fdg. 30); and, in general, that there was no factor which set Wisconsin apart from other States and justified treating it as a distinct geographic submarket.

In holding that the three-State area is not "a section of the country" (App. A, *infra*, pp. 22a–24a), the district court did not consider whether that area's 16½ percent of nationwide sales was sufficiently large to make it an economically significant market. With respect to the government's contention that the bulk of the merging companies' sales, and hence the most in-

tense competition between them, took place in the three-State area, the court held (App. A, p. 24a):

> * * * in this case where the companies involved concededly competed nationally, the plaintiff, in order to satisfy its burden of proving that the three state area is a relevant geographic market, must demonstrate something beyond the fact that isolation of that area from the national market would result in percentages favorable to its position. It must first demonstrate that under the "commercial realities" of the beer industry, Illinois, Michigan and Wisconsin is a relevant market area. * * *

The court went on to appraise the effects of the merger in the only market it considered relevant—the continental United States—and ruled that the government had not proved that the merger was likely to lessen competition substantially. After noting that Pabst's share of that market after the acquisition was not large enough *per se* to permit the inference of probable anticompetitive effects, the court held that it could give no weight to the evidence of a trend toward concentration in the industry, since there was no showing that this development was the result of prior mergers rather than of "normal competitive forces" (App. A, p. 32a).

THE QUESTIONS ARE SUBSTANTIAL

The court below has approved a merger combining the assets and market power of two major producers of beer in an industry characterized by steadily increasing concentration. Judged by national sales the merger enabled the tenth ranking brewer, Pabst, with

3.02 percent of the market to add the 1.47 percent share of Blatz, thus to become the fifth largest brewer with 4.49 percent of all national sales, and to become—three years later—the third ranking brewer with 5.83 percent of national sales. The full significance of these figures and of the merger from the standpoint of Section 7 cannot be appreciated, however, without due regard for two additional circumstances:

First, the acquisition accelerates a sharp trend towards the concentration of economic power in the beer industry with small or regional brewers giving way to dominant national concerns.

Second, since the sales of beer by Pabst and Blatz were naturally largest in areas best served by their breweries and since both had breweries in Milwaukee, the actual loss to competition in that section of the country was much greater than revealed by figures for sales throughout the nation as a whole. Blatz had the largest sales in Wisconsin of any brewer, with 12.81 percent. Pabst ranked fourth with 11.14 percent. The merger combined the two, giving Pabst 24 percent, which was more than twice the share of any other concern. These figures are not mere happenstance. Wisconsin and the adjoining States of Illinois and Michigan are the three populous States best served by both Blatz and Pabst breweries. Between 55 and 73 percent of Blatz's sales and 30 percent of all Pabst sales were made in those States. The combined figures for sales in Wisconsin, Illinois and Michigan show that the merger brought together the sixth and seventh ranking sellers, each with be-

tween five and six percent of this three-State market, forming a combine that soon became the largest seller of beer in the three States measured as a whole.

The court below held both circumstances irrelevant, the first because the trend towards concentration was not proved to be the result of mergers and the second because the only appropriate market for measuring the effect of the merger was nationwide. Both rulings, we submit, were erroneous. Both raise important questions in the administration of the antitrust laws. Their resolution not only will affect past and impending mergers in the brewing industry but will set standards of wider application.

1. It can hardly be denied that a steady trend towards concentration is one of the dominant facts of the brewing industry. The trend has continued unabated for nearly thirty years. In 1934, there were 708 brewing companies in the United States. Although the consumption of beer more than doubled in the 27-year period which followed (increasing from 41 million barrels in 1934, to 84 million barrels in 1957, to 89 million in 1961), the number of brewing companies declined drastically from 708 in 1934, to 206 in 1957, to 162 in 1961. In 1961, there were less than one-fourth as many brewers as there had been 27 years earlier. Meanwhile, the share of the market held by the few largest companies steadily increased. The top 25 concerns, which in 1942 accounted for 42 percent of the industry's sales, recorded 69 percent in 1957 and 77 percent in 1961. Of the remaining 137 companies selling in the continental United States, none

accounted for more than one percent of sales. A comparable trend prevailed among the top 10 firms, which held 33 percent of the market in 1948, 45 percent in 1957, and 53 percent in 1961.[8]

We submit that in an industry which has experienced such a dramatic, long-sustained, and still-continuing trend toward concentration, the acquisition of any substantial competitor by one of the leading companies falls within the statutory ban, at least in the absence of any justification.[9] In 1957, the year preceding the merger, Pabst and Blatz ranked tenth and eighteenth, respectively, in national sales, their respective shares being 3.02 and 1.47 percent. Pabst emerged from the acquisition as the nation's fifth largest brewing company, with 4.49 percent of the national sales. By 1961, Pabst had risen to third place with 5.83 percent, a share exceeded only by Anheuser-Busch's 9.55 percent, and Schlitz's 6.49 percent (JX 44). While the percentage shares may appear small when considered in isolation, they take on larger significance in the context of growing concentration. The purpose of Section 7, as this Court has stressed, is to curb tendencies toward concentration in their incipiency. *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 346. It would be surprising indeed if a statute so designed did not prohibit so sub-

[8] The share of the top ten has been placed at 57 percent in 1963. *Fortune*, October 1964, p. 226. A recent commentary in a financial publication on the brewing industry forecasts that "[t]he U.S. will end up with perhaps a dozen beer companies." *Forbes*, November 15, 1964, p. 31.

[9] Since the complaint was dismissed at the close of the government's evidence, the only question here is whether the government made a *prima facie* case.

stantial an acquisition in an industry which has been moving rapidly along the path of increasing centralization.

The court below gave no weight whatever to the evidence of a trend toward concentration, holding, in effect, that such evidence is relevant only when the trend is shown to have resulted from prior mergers rather than from normal competitive forces with which Congress had no wish to interfere. The court's analysis, we submit, confuses two wholly different points. It is quite true that Section 7 was not intended to "interfere" with "normal competitive forces" or to bar increases in concentration not attributable to mergers. But here a merger *is* involved—an acquisition which artificially accentuates, to a significant degree, the trend of the industry in the direction of oligopoly. The only question here, therefore, is whether the probable effect upon competition of the merger artificially eliminating a substantial competitor is to be judged against the background of the actual economic conditions in the industry or as if they did not exist. Judge Tehan's ruling means, in substance, that the probable effect of a merger upon competition must be found to be the same whether it occurs in an industry characterized by a large and constant number of small firms with frequent new entrants to the market or in an industry in which there is a marked trend towards oligopoly. Such a rule would not only be artificial; it would also disregard the policy of Section 7. The disappearance of numerous small, local companies, whether it be

through acquisitions or through inability to compete effectively with their large regional and national rivals, underscores the public importance of barring combines destroying the independence of the strong and viable companies which remain. If the existing trend toward concentration in the beer industry continues and the ranks of the small brewers are still further depleted, the only hope of avoiding an oligopolistic market structure dominated by a handful of giant concerns lies in the preservation of vigorous, medium-sized competitors such as Blatz. Were there no such trend, the probable adverse effect of the same merger upon competition in the brewery industry would be markedly less.

Our position upon this issue is supported by two analogous rulings by this Court. In *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 365 n. 42, the Court stated that "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." The point was re-affirmed in *United States* v. *Alcoa*, 377 U.S. 271, 279, where the Court laid stress upon the oligopolistic structure of the aluminum-conductor market even though that structure was not primarily the consequence of prior acquisitions. In neither case did the Court inquire into the causes of the concentration. By the same token, we submit, if concentration is rapidly increasing, the importance of preventing even slight additional increases is "correspondingly great," and the causes of the existing condition are equally irrelevant.

So far as we know, this is the first case in which a court has held that, in appraising the impact of a merger upon competition, the existence of a strong trend toward concentration may be disregarded unless it stems from a prior history of mergers. That holding, we believe, is basically contrary to the purposes of the Clayton Act and should be reversed by this Court.

2. Quite apart from the considerations noted above, an independent ground for reversal is that the court misinterprets the statute's concern with the adverse effects of competition *in any section* of the country. The government's evidence shows that in at least one section of the country the effect of the merger upon competition would be much more severe than anything suggested by the national figures. In Wisconsin the effect of the combination was to give Pabst 24 percent of all sales, a share which it soon increased to 27.5 percent. In the three States of Wisconsin, Illinois and Michigan—Pabst emerged with 11.32 percent and shortly forged ahead to command 15 percent of the tri-State sales—about 50 percent more than its nearest rival (GX 208).

The court below gave no weight to this evidence because it concluded that neither Wisconsin nor the tri-State area was an appropriate market in which to test the effects of the Pabst-Blatz merger; in its view, since many brewers sell beer nationwide, the market is national and nationwide sales should be used to test the effect of the merger upon competition. The ruling raises a novel and very important question in the administration of Section 7.

Evidence that a number of rival producers sell their products in competition in all parts of the country and that some of the products consumed in any region may be shipped in from outside the region is not enough to establish that there are no relevant geographical submarkets. Such nationwide sales and shipments are found in two utterly dissimilar situations. A market may be national in the sense that all sellers are seeking to sell to any potential buyers and all buyers to buy from any seller, unaffected by location, as might be true of locomotives or large commercial aircraft. That would be a true national market like a national stock or grain exchange. With many other products, however, especially consumer goods, the sellers are not equally able and willing to sell in every area; the buyers have established local preferences and limited range; and sometimes prices will vary from place to place. In such an industry the extent of competition between any two companies and the consequences of their merger will vary greatly from place to place because there is not a true national market.

The marketing of beer furnishes a prime illustration of the latter situation. No one would contend that the effect upon competition of a merger between a nationwide distributor and a large regional or local seller of beer could fairly be appraised by looking exclusively to their shares of all beer sold in the United States. There would be a marked effect upon local or regional competition, which would not be disclosed by the figures for national sales. Figures for national

sales would show only a statistical average effect upon competition.

The same is obviously true of a merger between two companies both of which have nationwide sales but which sell large quantities of beer in some sections and very little in others. In Colorado and Texas, for example, the effect of the Pabst-Blatz merger upon competition may be minimal since neither concern sells much beer in those areas. Especially in Wisconsin, but also throughout the three-State area of Wisconsin, Illinois and Michigan, the effect will be much greater because both companies sold large portions of the beer consumed in those areas. The consumer in Wisconsin, where the merger gives one concern command of 25 percent of the sales, derives no benefit from the fact that the merger has scant adverse effect upon competition in Texas or Colorado. As in the case of the acquisition of a regional beer, figures for national sales, taken alone, show little more than an average effect upon competition.

Section 7 is concerned with more than the nationwide effects of a merger or the average national injury to competition. It proscribes any merger having sufficient anticompetitive consequences—

> in any line of commerce *in any section* of the country.

Thus, as the Chief Justice pointed out in *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 337 n. 65, "[i]f two retailers, one operating primarily in the eastern half of the Nation, and the other operating largely in the West, competed in but two mid-Western cities, the fact that the latter outlets represented but a small

share of each company's business would not immunize the merger in those markets in which competition might be adversely affected." "The proper question to be asked * * * is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate" (*United States* v. *Philadelphia Bank*, 374 U.S. 321, 357). Consequently, in the present case, the court below should not have concerned itself solely with a national average but with those areas where in fact the competitive overlap was clear and the adverse effect upon competition keen. The statutory standard is whether "in any section of the country" the merger might tend substantially to lessen competition. A single State, a group of States, or even a single metropolitan area may qualify as a "section" of the country for that purpose.[10]

In the present case the government offered compelling proof that the Pabst-Blatz merger will have markedly more serious anticompetitive consequences in Wisconsin and the tri-State region—areas con-

[10] *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357 (a four-county metropolitan area); *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 657 (a single State and a section of the State); *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 336–337 (single metropolitan areas); *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800 (C.A. 9), certiorari denied, 370 U.S. 937 (a three-State area); *United States* v. *Bethlehem Steel Corporation*, 168 F. Supp. 576 (S.D. N.Y.) (a four-State area and two single State areas); *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 152 F. Supp. 387 (S.D. N.Y.), affirmed, 259 F. 2d 524 (C.A. 2) (a ten-State area).

veniently served by the Milwaukee and Peoria Heights breweries—than any average effect spread over the country as a whole."[11] The record makes it clear that the breweries in the region are the principal sources of supply for, and the major competitive factors in, the territory surrounding them. Nearly 80 percent of the beer consumed in Wisconsin in the period 1955–1957 came from Milwaukee breweries (computed from JX 19, JX 60, 63, 66; GX 257); another 10 percent came from the Hamm brewery in St. Paul, Minnesota, just across the State line (JX 60, 63, 66; GX 257). Of the 20 top sellers of beer in Wisconsin, 17 operated Milwaukee breweries and two—Hamm and Drewry's of Chicago—had their breweries in adjoining States (*ibid*). It is obvious, too, that the sectional market near his brewery is especially important to a brewer. Blatz sells 41 percent of its beer in Wisconsin. Pabst sells 44 percent of its total output in States where Pabst breweries are located (California, Illinois and Wisconsin) and another 6 percent in New York, which is directly across the Hudson River from Pabst's Newark brewery. Since Pabst's California and Newark breweries admittedly make only local or regional sales, Pabst must sell no less than about 20 percent of the output of its Milwaukee and Peoria Heights breweries in Wisconsin (JX 66; GX 110). Of all the beer consumed in Wis-

[11] In this respect the government challenges the district court's finding that "There is no evidence in the record that competition in the beer industry is in any manner localized * * * or affected by the location of the brewery or that the place of production affects sales or the extent of the market area" (Fdg. 30).

consin Blatz sold 12.81 percent and Pabst 11.14 percent, so that the acquisition gave Pabst just under 25 percent of the market.

The figures for the tri-State area (Wisconsin, Illinois, and Michigan) show that the Wisconsin figures result from, and reflect, economic forces rather than the caprices of chance. Distributors and consumers in the tri-State area purchased 77 percent of their supplies from concerns operating local breweries. Blatz sold 70 percent of its beer there. Pabst made 30 percent of its total sales there and about 45 percent of the output of its Milwaukee and Peoria Heights plants (JX 91, GX 110).[12] The merger put 11 percent of the area sales in the control of Pabst.

Since Wisconsin is an amply large and important enough area to qualify as a section of the country for the purposes of Section 7,[13] the *Philadelphia Bank* case, *supra*, makes it plain that the merger is invalid if it "may tend substantially to lessen competition" in that area. The foregoing statistics showing the sources and Pabst and Blatz shares of the sales of beer in Wisconsin not only demonstrate that the effects of the merger will be felt there more severely than in other States but they give a fair indication of the severity of the anticompetitive consequences—just under 25 percent of the present sales will be concentrated in the hands of a large national brewer and the independence of a major Wisconsin competitor will be eliminated.

[12] The latter figure is calculated by subtracting the output of the New Jersey and California breweries, which do not ship into the midwest, from the total Pabst sales.

[13] Cases cited n. 10, *supra*, p. 20.

The court below, in rejecting Wisconsin as a meaningful section of the country in which to test the merger, relied heavily on the fact that beer was freely imported into and exported out of Wisconsin. It is true that in appraising the market shares in Wisconsin one must recognize that Wisconsin is not an economic island. For Pabst to acquire 25 percent of all Wisconsin sales carries somewhat different consequences for the Wisconsin consumer than an acquisition of 25 percent of all national sales would carry for the national consumers. The supply for Wisconsin is a good deal more elastic since national brewers and even concerns theretofore confined to other localities could divert beer to Wisconsin, given a stimulus, more readily than the national supply could be increased. But even if the Wisconsin area is not a perfect separate market, neither is it so much a part of a simple, homogenous national market as to justify disregarding the special importance of Pabst and Blatz in Wisconsin and relying exclusively on national statistics. One must use the statistics available and appraise them as best he can.

The decision below gains no support from such precedents as *Tampa Electric Co.* v. *Nashville Co.*, 365 U.S. 320; *Brown Shoe Co.* v. *United States*, 370 U.S. 294; and *United States* v. *Philadelphia National Bank*, 374 U.S. 321. As the Chief Justice pointed out in the *Brown Shoe* case (370 U.S. at 336), "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one." In the *Tampa Electric* case the Court looked to the area from which the buyer could be

served and in which the producers who could serve it conducted their operations, because that was the area of competition which, as a practical matter, would be affected by the requirements contract. In the *Philadelphia Bank* case, as pointed out above, the Court held that it is proper to look to the area in which the effects of the merger will be "direct and immediate" even though the merging firms do business elsewhere, and *Brown Shoe* held that a city with a population exceeding 10,000 and its immediately contiguous area was a relevant submarket even though there is some competition among stores in different communities in the same "standard metropolitan area." Manifestly, nothing in this approach requires ignoring the practicalities of the special sectional competition in the sale of beer in favor of a purely statistical national average.

Judged by the pragmatic tests used in prior decisions the area centered upon Wisconsin had the characteristics of a special submarket from the viewpoint of both sellers and buyers. Wisconsin was a "home territory" for both companies, accounted for a substantial segment of their total sales, and was the scene of their most intensive competition. Both companies had breweries there. Blatz's only brewery was located in Milwaukee, and in the five-year period preceding the merger (from 1953 to 1957 inclusive), about 40 percent of its total national sales were made in the State of Wisconsin (Fdg. 24; JX 51–55). It was in Milwaukee, too, that Pabst operated the largest of its four breweries; and Wisconsin accounted for over 10 percent of all of Pabt's sales—an amount

exceeded only in California and Illinois where two of its other breweries were situated—and roughly 20 percent of the output of its Milwaukee and Peoria Heights breweries (JX 66; GX 110). The significance of the fact that the merger gave Pabst control of two local breweries is attested by the fact that nearly 80 percent of all beer consumed in Wisconsin in the period 1955–1957 came from breweries located within the State. More than half the remainder came from a St. Paul brewery just across the State line. Seventeen of the top twenty sellers of beer in Wisconsin operated breweries within the State.[14]

The record does not show whether the predominance of local beers is due to price differences based upon transportation costs, to the good will and loyalty of Wisconsin consumers toward their local product, to the existence of established business relationships between Wisconsin brewers and distributors, or to some other factor or combination of factors. Whatever the reason, the fact is that Wisconsin was an extraordinarily self-sufficient area of beer supply. In 1957, the State was the home of 38 breweries (GX 213), ranked second in the production of beer, and produced more than three and a half times as much beer as it consumed, a ratio unequaled in any other State and even remotely approached in only one.[15] No one can doubt that an out-of-State brewing company con-

[14] The remaining three were Hamm's of St. Paul, Anheuser-Busch of St. Louis, and Drewrys of Chicago (JX 60, 63, 66).

[15] JX 19, 29, 66; GX 213. The only State even remotely comparable to Wisconsin as a beer surplus area was Missouri, which in 1957 produced 6,622,896 barrels (JX 29) and consumed 2,209,373 barrels (JX 19).

sidering expansion to new markets would have judged the conditions of competition in Wisconsin as distinct from those prevailing elsewhere, and the prospects of successful full-fledged entry as markedly less favorable. The demonstrated preference of Wisconsin consumers for locally produced beers and the domination of the market by Wisconsin producers as a group were important "commercial realities" which set the State apart.

We recognize, of course, that State boundaries do not necessarily have intrinsic commercial significance. Contour lines marking differences in competition from the standpoint of the Pabst-Blatz merger probably would not correspond exactly with the political boundaries. Nonetheless, State statistics often provide the most convenient and workable means for measuring the effect of a merger in a submarket, once the general area has been selected upon economic grounds. A State is a well defined and independently significant geographic entity and thus not the product of gerrymandering for purposes of a particular litigation. Economic data is usually essential to measure competition and the States are areas for which relevant market statistics are most likely to be available—particularly in the case of a product, such as beer, which is subject to extensive State taxation and regulation. Businesses frequently organize their operations on a State-by-State basis, and the record shows this to be true in the present case. Pabst adopted a separate pricing policy in each State, and while in some cases a uniform price prevailed throughout a multi-State area, it was more common for the price to vary even

as between neighboring States (GX 115). Significantly, moreover, the State of Wisconsin was singled out for special treatment; after the merger, Pabst sold its newly acquired Blatz product at a higher price in that State than in any other, presumably in recognition of its extraordinary popularity there. Thus, the acquiring company itself considered each State as a separate submarket for pricing purposes and recognized Wisconsin as a particularly distinctive sales area. Surely, the government's evidence at least established a prima facie case.

Even if the Wisconsin figures taken alone were thought to give a somewhat inaccurate picture because of the number of national brewers presumably willing to increase shipments to Wisconsin, we submit that reliance on the figure for nationwide sales would give a totally misleading impression of the effect of the merger upon competition in the area dominated by Wisconsin breweries. The composite picture, even when viewed most favorably to appellees, is one of a merger bringing together a leading nationwide firm and one of its substantial competitors in an industry in which there is a continuing sharp trend towards the elimination of competitors and the concentration of economic power, with severe sectional anticompetitive consequences. Using nationwide sales as a guide to the average effect upon competition the merger brought together tenth and eighteenth ranking firms with 3.02 percent and 1.47 percent of the market, forming the nation's fifth largest brewing company with 4.49 percent of the market. Both of the merging firms had breweries in Milwaukee and their com-

bined sales in Wisconsin were 24 percent of the whole. Taking Wisconsin, Illinois and Michigan together, Pabst and Blatz combined made 11.32 percent of the sales in the area—a share that soon exceeded 15 percent. Even if it be assumed that the effects of the merger upon sectional competition are considerably less adverse than the Wisconsin and tri-State figures might suggest, nevertheless, they considerably exceed the range for permissible mergers in an industry of increasingly concentrated economic power, and the composite picture is more than enough, in the absence of contrary evidence, to establish the violations of Section 7.

CONCLUSION

This appeal presents substantial questions of public importance. Probable jurisdiction should be noted.

Respectfully submitted.

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JULY 1965.

APPENDIX A

United States District Court, Eastern District of Wisconsin

No. 59-C-215

UNITED STATES OF AMERICA, PLAINTIFF

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, DEFENDANTS

OPINION

On or about July 30, 1958, Pabst Brewing Company acquired the assets and business of Blatz Brewing Company, a wholly owned subsidiary of Schenley Industries, Inc., for approximately $11,000,000 in cash, $3,500,000 in debentures, 200,000 shares of Pabst common capital stock and a stock purchase warrant for an additional 350,000 shares of such stock. On October 1, 1959, the United States of America filed a complaint in this court pursuant to § 15 of the Clayton Act (Title 15 U.S.C. § 25) alleging that the effect of that acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in the United States, the State of Wisconsin, and the three state area of Wisconsin, Illinois, and Michigan in violation of § 7 of the Clayton Act (Title 15 U.S.C. § 18) and asking in part that the court adjudge the acquisition

to be illegal and require Pabst to divest itself of the business and assets of Blatz.[1]

Prior to the trial, an intensive pre-trial program produced considerable agreement between the parties. It was agreed that the line of commerce involved herein is the beer industry, meaning the production, sale and distribution of beer and that the continental United States is a relevant geographic market for purposes of this case. Jurisdiction and venue were admitted by Pabst, as was the fact that prior to the acquisition both Pabst aand Blatz sold beer in interstate commerce, which Pabst continues to do. Issue remained, however, as to whether the State of Wisconsin and the three state area of Wisconsin, Illinois, and Michigan are also appropriate sections of the country within which the probable effect of the acquisition is to be judged, Pabst claiming, contrary to the plaintiff's allegations, that the only relevant market area is the continental United States. There was also no meeting of the minds on the probable effect of the acquisition, Pabst denying that the effect thereof may be substantially to lessen competition in the areas advanced by the plaintiff as relevant and alleging that the purpose thereof was to avoid the consequences of Pabst's declining sales and increasing losses[2] and to preserve and promote competition and that the effect thereof was to preserve and promote competition. The plaintiff therefore faced at the

[1] The defendant, Val Corporation, formerly Blatz Brewing Company, and the defendant, Schenley Industries, Inc., have been joined and retained in this action solely for purposes of relief. (See *United States* v. *Pabst Brewing Company* (E.D. Wis., 1960) 183 F. Supp. 220.)

[2] The plaintiff moved to strike this "failing enterprise" defense, contending that it was available only when the acquired, not the acquiring, entity was failing. This motion was denied. (See order of March 31, 1961.)

trial the burden of proving, as it alleged, that Wisconsin and the three state area of Wisconsin, Illinois and Michigan are sections of the country within which the probable effect of the acquisition of Blatz by Pabst is to be examined and that the probable effect of that acquisition may be substantially to lessen competition or to tend to create a monopoly in the beer industry in either the continental United States or, if proved to be relevant market areas, in the State of Wisconsin or the three state area.

Pre-Trial Occurrences

After issue was joined, a series of pre-trial conferences was held to prepare this case for trial on the issue of whether § 7 had been violated. It was determined that a hearing on the type of relief to be afforded, if any, would await this court's decision on the substantive issue. It was further determined that prior to trial the plaintiff would identify the persons it had interviewed in connection with this case and those it intended to call as witnesses and would identify all documentary evidence upon which it would rely and that Pabst would make similar revelations to the plaintiff. Pursuant to the court's pre-trial directions, the plaintiff listed seventy-one persons whom it proposed to call as witnesses at the trial.

When this case was originally scheduled for trial on October 14, 1963, by order of May 7, 1963, it was estimated that the trial would last two months, such estimate being based in part on the plaintiff's expression of intention to call seventy-one witnesses. Thereafter, the trial was rescheduled twice, finally for January 27, 1964, and since the plaintiff still indicated that it would call seventy-one witnesses, no change was made in the trial estimate.

On January 3, 1964, the plaintiff and Pabst each

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moved for an order granting permission to issue subpoenaes to witnesses residing more than 100 miles from Milwaukee and outside of this district. In the plaintiff's motion, its counsel stated:

> "All such witnesses are believed by the plaintiff to have evidence material to the issues of this cause, and that the testimony of said witnesses is necessary to establish the alleged violations of the charges and allegations contained in the complaint filed in the above case." (sic)

On January 13, 1964, the plaintiff filed its pre-trial brief reiterating its belief in the importance and essentiality of the testimony of its witnesses as follows:

> "In the course of proving the facts about the 'industry context' required by the *Brown Shoe* opinion, the Government will call brewer witnesses to testify about the actual competitive situation in the beer industry. This is an invaluable and time honored mode of evidence in antitrust cases where the effect on competition is an issue. See for instance, *United States* v. *Philadelphia National Bank et al., supra,* at pages 367–369. These brewers deserve the close attention of the court not only because of their intimate knowledge of actual competitive conditions, but also because they represent companies which were the particular object the Anti-Merger Act sought to protect. These witnesses will show that the brewing industry is still, to some extent at least, an industry where control remains in the local community in the independent small company. Some of these witnesses will also testify as to the probable effect of changes in Blatz prices. This is perfectly proper under Section 7 which by its very nature looks to the future as already pointed out by the word 'may.' The Court is called on in

deciding these cases to predict the future and to do so must receive all the help it can get from industry representatives. The best source lies in industry experts, men long versed in the problems of breweries. Some of the Government's brewery witnesses in Wisconsin will testify that if Pabst ever cuts either the Pabst or Blatz prices to the level of their own, they would immediately be forced out of business. This is not subject to the objection that it is speculative because it comes from experts and will be received after a proper foundation is laid. We will prove that in other areas other breweries have been adversely affected by the lowering of Pabst or Blatz prices to the level of their own." (Pages 27–28)

* * * * *

"The testimony of distributors presented in this case will be generally similar to that approved by the Court of Appeals in *Crown Zellerbach Corporation* v. *Federal Trade Commission*, 296 F. 2d 800 (C.A. 9, 1961) *cert. den.* 370 U.S. 937 (1962). That case involved the merger of two paper producers which resulted in the cutting off of an important source of supply to independent paper jobbers. The court at pages 828–830 discussed at length the testimony of jobbers about how their businesses had been injured by the merger and upheld the Federal Trade Commission's finding of lessening competition." (Page 32)

Also on January 13, 1964, a final conference was held at the request of counsel at which the plaintiff again affirmed its intention to call witnesses and both the plaintiff and Pabst agreed to furnish opposing counsel with a list of witnesses to be called each week, and the order of their expected appearance, by Wednesday of the preceding week. An order respecting that agreement was submitted by the parties, and was received and signed by the court on January 20, 1964.

On January 23, 1964, two court days before the trial was to commence, the court received a letter from counsel for the plaintiff, dated January 22, 1964, the day the plaintiff was to furnish its list of witnesses for the first week of trial, which letter stated:

> "Pursuant to the final pre-trial order, the list of plaintiff's witnesses for the week beginning January 27, 1964 is to be furnished to defense counsel on January 22, 1964. As was indicated to some extent at the last pre-trial conference, attorneys for the Government have been assiduously attempting to reduce the number of witnesses and thus narrow the issues.
>
> "It is now the decision of the Government that this case well lends itself to trial as a purely documentary case with no live witnesses.
>
> "The purpose of this letter is to inform the Court and defense counsel of this decision and the resulting sharp curtailment of the length of trial required for the Government's case. We now consider it probable that the Government will rest within two days commencing on January 27, 1964."

No explanation was volunteered by the plaintiff for this drastic change of position regarding the desirability and necessity of testimony of many witnesses to establish its case and only when counsel was pressed for an explanation by the court on April 30, 1964 was any attempt at explanation made. With respect to this matter, we understand the plaintiff's position to be that it decided to call no witnesses at the trial because the state of the law had been clarified recently to the extent that statistics satisfied the plaintiff's burden of proof. We must here note that the only significant recent clarifications in the merger field prior to January 22, 1964, when the plaintiff decided to call no witnesses, were *Brown Shoe Co. Inc.* v. *United States* (1962) 370 U.S. 294 and *United States* v. *Philadelphia National Bank, et al* (1963)

374 U.S. 321. Both of these cases were decided long before January 22, 1964 and the familiarity of plaintiff's counsel with them prior to that date is revealed in the plaintiff's pre-trial brief.

THE TRIAL

The trial began on January 27, 1964, at 10:45 A.M., with opening statements. At approximately 2:30 P.M., the plaintiff began presenting its case, that is, offering exhibits and reading portions of depositions. It rested at about 3:45 P.M. the following day, after offering some 260 exhibits, whereupon the defendant Pabst filed a motion to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs with respect to that motion were filed, a hearing was held on April 30, 1964, proposed findings and comments thereon were filed, and the court is now prepared to render its decision.

PABST AND BLATZ

When it acquired Blatz in 1958, Pabst already operated four brewery plants, one, the largest, in Milwaukee, Wisconsin, one in Peoria Heights, Illinois, one in Newark, New Jersey, and one in Los Angeles, California. Blatz operated but one plant, in Milwaukee, Wisconsin, which plant was placed on a shut-down status in 1959, with Blatz brand beer being brewed thereafter at the four Pabst plants.

In 1957, the last full year prior to the acquisition, Pabst ranked tenth in sales of beer in the United States with 3.02% of the market and in 1958, its rank was eleventh, with 2.67% of the market. Blatz was the eighteenth largest selling brewery in the United States in 1957 with 1.47% of the market and the thirteenth largest selling brewery in 1958 with 2.04% of the market. In 1957, Pabst beer, under various brand names was sold throughout the continental

United States and Blatz beer was sold in 38 states and in the District of Columbia. In earlier years Blatz beer had been sold throughout the continental United States.

The Plaintiff Has Not Satisfied Its Burden of Proving That Wisconsin or the Three State Area Is a Relevant Geographic Market

Both the plaintiff and Pabst have cited with conviction the following language from the *Brown Shoe* case, in support of their respective positions as to the relevant market area:

> "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal legalistic one. The geographic market selected must, therefore, both 'correspond to the commercial realities' of the industry and be economically significant." 370 U.S. 294, at Pages 336–337.

Each maintains strenuously that a proper application of this standard must result in a determination that its position with respect to the relevant geographic market or markets is correct.

Since the parties are agreed that the continental United States is a relevant geographic market, we shall not in this section of our opinion discuss the facts pertaining to that area. We shall discuss separately the pertinent facts regarding the disputed areas of Wisconsin and the three state area of Wisconsin, Illinois and Michigan and our reasons for determining that it has not been proved that either of those areas is a relevant geographic market within which the probable effect of the acquisition of Blatz by Pabst should be tested.[3]

[3] Some variances exist in the exhibits with respect to the statistics hereinafter presented, but it does not appear that the variances are material.

WISCONSIN

Since the repeal of prohibition in 1933, Wisconsin has consistently ranked among the top three states in the production of beer. Statistics presented by the plaintiff on taxpaid withdrawals [4] from 1933 through 1961 and on production from 1935 through 1961 reveal this fact and reveal that in 1957, Wisconsin ranked second in production and taxpaid withdrawals of beer with over 11,000,000 barrels, in 1958 it ranked first with over 11,000,000 barrels, in 1959 and 1960 it ranked second with over 10,000,000 barrels and in 1961, with taxpaid withdrawals over 10,000,000 and production over 11,000,000 barrels, it again ranked second. From 1957 through 1961, total national taxpaid withdrawals grew from over 84,200,000 barrels to almost 89,000,000, Wisconsin's percentage thereof ranging from 11.45% (1960) to 13.08% (1958), and total national production grew from over 89,300,000 barrels to almost 95,000,000 barrels, Wisconsin's percentage thereof ranging from 11.34% (1960) to 13.18% (1958).

In beer consumption in the United States, Wisconsin ranked either eighth, ninth or tenth for each of the years 1934 through 1961, and its ranking for 1957 through 1961 was ninth.[5] During each of those latter years, over 83,700,000 barrels of beer were consumed nationally, Wisconsin consuming between 3.66% and 3.75% thereof.

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[4] "Taxpaid withdrawals" means the output of breweries on which the federal excise tax of $9.00 per barrel is paid.

[5] In per capita consumption of malt beverages, Wisconsin's ranking for those latter years was first. In 1961, 39% of the beer sold in Wisconsin, or ten gallons per person was draught beer, and the national average of draught beer sold was 19% of the beer sold, or 2.8 gallons per person. Per capita consumption of draught beer in Wisconsin in that year was higher than in any other state reporting that statistic.

From 1935 through 1961, the production of beer in Wisconsin far exceeded Wisconsin consumption of beer. For example, during the years 1957 through 1961, the number of barrels produced and consumed in Wisconsin were:

Year	Barrels produced	Barrels consumed
1957	11,735,362	3,066,673
1958	11,868,224	3,112,965
1959	10,737,424	3,198,468
1960	10,589,589	3,267,348
1961	11,198,894	3,303,154

And the Wisconsin consumer did not limit himself to Wisconsin brewed beer, but drank freely of beers brewed by out of state brewers. It is ovious, therefore, that the great bulk of Wisconsin's production of beer was consumed outside of that state.

During 1955, beer was sold in Wisconsin by 77 breweries. The number of breweries operated in that state in that year was 43. During 1956, beer was sold in Wisconsin by 74 breweries and 43 breweries were operated in that state. During 1957, beer was sold in Wisconsin by 69 breweries and 38 breweries were operated in that state. During 1958, beer was sold in Wisconsin by 68 or 69 breweries and 38 breweries were operated in that state. During 1959, beer was sold in Wisconsin by 60 breweries and 38 breweries were operated in that state. During 1960, beer was sold in Wisconsin by 58 breweries and 33 breweries were operated in that state. During 1961, beer was sold in Wisconsin by 54 breweries and 33 breweries were operated in that state.

Both before and after the acquisition, Pabst and Blatz found the Wisconsin consumer appreciative of their products. Their rankings in sales and percentages of total beer sales in Wisconsin from 1955 through 1961 were as follows:

	Pabst		Blatz		Pabst-Blatz	
	Rank	Percent of Wisconsin sales	Rank	Percent of Wisconsin sales	Rank	Percent of Wisconsin sales
1955	3d	10.51	1st	14.01		
1956	4th	10.86	1st	12.72		
1957	4th	11.14	1st	12.81		
1958	4th	10.73	1st	12.99		
1959					1st	24.80
1960					1st	26.14
1961					1st	27.41

The total number of barrels sold of Pabst and Blatz nationally and the number sold in Wisconsin for the years 1949 through 1961 were as follows:

	Pabst		Blatz	
	National	Wisconsin	National	Wisconsin
1949	4,336,378	302,556	1,545,622	491,626
1950	3,763,395	295,203	1,650,071	574,302
1951	3,901,571	271,682	1,665,281	567,726
1952	4,076,816	301,914	1,551,523	607,589
1953	3,925,757	283,347	989,288	430,285
1954	3,263,033	304,036	923,583	427,609
1955	3,129,452	324,506	907,836	432,510
1956	3,017,552	333,539	937,241	389,410
1957	2,548,452	340,376	1,239,334	388,678
1958	2,254,001	333,244	1,717,489	403,437
(After acquisition)				
1959	2,060,775	374,764	2,133,545	416,322
1960	1,952,130	429,402	2,426,440	424,327
1961	2,067,346	475,490	2,624,716	429,772

Throughout those years, more Blatz beer was sold in Wisconsin than in any other state, except in the years 1958 through 1961, when Wisconsin sales of Blatz were exceeded by Blatz sales in Michigan. In none of those years except 1960, was Wisconsin the largest state market for Pabst.

In the years 1955 through 1960 the following amounts were spent by Pabst for advertising and promoting of Pabst beer nationally and in Wisconsin:

	National advertising	Wisconsin advertising
1955	$7,261,270	$436,427
1956	8,450,316	557,722
1957	8,640,837	787,924
1958	6,309,002	558,751
1959	5,422,782	647,468
1960	5,724,267	779,472

The following amounts were spent by Pabst in 1959 and 1960 for advertising and promoting of Blatz beer:

	National advertising	Wisconsin advertising
1959	$4,185,697	$986,817
1960	5,113,295	1,001,020

After the acquisition, the price charged distributors in Wisconsin for "Blatz Pilsner" brand beer on packages of twenty-four 12 oz. returnable bottles, F.O.B. brewery, was generally higher than that charged elsewhere.

The plaintiff contends that Wisconsin is a relevant market for purposes of this case because (a) prior to the acquisition, the most intense competition between Pabst and Blatz existed in Wisconsin, therefore the impact of the acquisition would be most severe in that state, (b) Wisconsin's standing in the beer industry makes it an appreciable segment of the market, (c) each state is a separate relevant market, since each state has its own regulations affecting the beer industry, (d) Blatz prices are kept higher in Wisconsin than in any other state, and (e) Wisconsin's high per capita consumption of beer, high consumption of draught beer and large number of small, locally owned [6] breweries make it a unique market. In support of its position that Wisconsin is a geographic

[6] There is no evidence in the record that any small brewery located in Wisconsin is locally owned.

submarket within which the effects of the acquisition may be tested it cites the *Brown Shoe* case, *supra,* the *Philadelphia Bank* case, *supra, United States* v. *Bethlehem Steel Corporation* and *The Youngstown Sheet and Tube Company* (S.D., N.Y., 1958) 168 F. Supp. 576, *Crown Zellerbach Corporation* v. *Federal Trade Commission* (C.A. 9, 1961) 296 F. 2d 800, *United States* v. *El Paso Natural Gas Co.,* (1964) 376 U.S. 651, and *United States* v. *First National Bank & Trust Co. of Lexington* (1964) 376 U.S. 665. While we agree that in a proper case the effects of a merger or acquisition should be tested in a geographic submarket, we do not believe that the plaintiff has introduced evidence sufficient to prove that the State of Wisconsin is a geographic submarket which corresponds to the commercial realities of the beer industry or is economically significant. In our opinion, all of the cases relied upon by the plaintiff on this issue involved fact situations substantially different from the facts involved in this case.

In both the *Philadelphia Bank* case, where the four-county Philadelphia metropolitan area was held to be the proper section of the country, in which to appraise the merger between the second and third largest banks in that area, and the *Lexington Bank* case[7] where a one county area was held to be the section of the country within which to test the effect of a consolidation of the first and fourth largest banks in that area, the line of commerce discussed by the Supreme Court was commercial banking. The records in both cases established that competition was localized by the factor of inconvenience. As the Supreme Court stated in the *Philadelphia Bank* case,

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[7] This case involved Sections 1 and 2 of the Sherman Act and not Section 7 of the Clayton Act.

> "In banking, as in most service industries, convenience of location is essential to effective competition. Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance. See *Transamerica Corp.* v. *Board of Govs. of Fed. Res. Sys.*, 206 F. 2d 163, 169 (C.A. 3rd Cir. 1953). The factor of inconvenience localizes banking competition as effectively as high transportation costs in other industries." 374 U.S. 321, at Page 358.

The beer industry is not a service industry and there is no evidence in this record that competition in the beer industry is in any manner localized or affected by location of a brewery. Absent such evidence, neither Bank case is authority here for the proposition that Wisconsin is a relevant geographic market.

The *El Paso Gas* case, cited by the defendant on oral argument, is of no assistance to us. It is not clear that there was even any issue as to whether California was a "section of the country."

The *Brown Shoe* case involved a merger between two companies each of which both manufactured and retailed shoes. With respect to the vertical aspect of the merger, the entire nation was held to be the relevant geographic market, (370 U.S. 294, at Page 328) as it was with respect to the horizontal aspect of the merger on the manufacturing level, the Supreme Court stating:

> "The parties do not dispute the findings of the District Court that the Nation as a whole is the relevant geographic market for measuring the anticompetitive effects of the merger viewed vertically *or of the horizontal merger of Brown's and Kinney's manufacturing facilities. As to the retail level, however, they disagree.*" 370 U.S. 294, at Page 337. (Emphasis added.)

The court's subsequent holding and agreement with the district court that the relevant geographic markets in which to analyze the merger were cities with populations exceeding 10,000 and their environs in which both Brown and Kinney retailed shoes through their own outlets related only to the retail level of the merging companies' operations. The record before us does not reveal that Pabst or Blatz competed or were likely to compete at the retail level through controlled outlets in any area prior to the acquisition. Rather, it appears that their sales of beer were made primarily through distributors or wholesalers. The breweries' relationship with these distributors and wholesalers has not been revealed, nor has the relationship of retail outlets to either the breweries or the distributors or wholesalers. Absent any evidence as to retail activities on the part of Pabst or Blatz, *Brown Shoe's* rule that on the retail level the effect of the merger involved could be analyzed in local areas or geographic submarkets is of no aid to the plaintiff.

In the *Crown Zellerbach* case, in which the Court of Appeals for the Ninth Circuit held that relevant market area within which the effects of the acquisition by Crown Zellerbach Corporation of the stock and assets of St. Helens Pulp and Paper Company were to be examined was the three state area of Washington, Oregon and California, the record supported a finding that "the great bulk of the domestic sales, of the papers involved, by Crown and St. Helens" (296 F. 2d 800 at Page 816) were made in that three state area. In 1952, the year before the acquisition, 71.7% of St. Helens' sales of relevant products were in that area and that area was St. Helens' "predominant and outstanding market." (296 F. 2d 800 at Page 817.) The record in this case does not reveal that Wisconsin held a comparable position with re-

spect to either Pabst or Blatz beer sales. In 1957, 340,378 of the 2,548,452 barrels of Pabst sold nationally were sold in Wisconsin, and 388,678 of the 1,239,334 barrels of Blatz sold nationally were sold in Wisconsin. While these Wisconsin sales are respectable, they do not approach the 71.7% found in the *Crown Zellerbach* case to constitute the Pacific coast states the predominant and outstanding St. Helens' market. And apparently the evidence in *Crown Zellerbach* revealed that the Pacific coast states were unique, possessing qualities setting them apart as a separate area.[8] No comparable evidence in this case establishes that Wisconsin is a unique market for beer or is to be treated differently, by reason of any peculiar characteristics, from any other area in which beer is sold.

In the *Bethlehem Steel* case, involving a proposed merger between Bethlehem Steel Corporation and The Youngstown Sheet and Tube Company, the court held that the appropriate relevant markets as to four of the products or lines of commerce involved included, but were not limited to the United States as a whole, a submarket thereof—the northeast quadrant of the United States, a submarket of that submarket—Michigan, Ohio, Pennsylvania and New York, a submarket of that latter submarket—Michigan and Ohio, and two submarkets of the latter submarket—(1) Michigan and (2) Ohio. As to seven other lines of

[8] The court stated in that case:

"Moreover this three-state market is one which, in the language of the Court of Appeals in American Crystal Sugar Co., supra, was subject to common economic forces; it is an area of extraordinarily rapid population growth, with large and growing cities, increasing industrial activities and other growth factors which set it apart from other areas in the west. The availability of alternative water transportation, while little availed of, has operated to furnish peculiarly favorable land carrier rates." (296 F. 2d 800, at Page 817.)

commerce, the appropriate relevant market was held to be the United States as a whole. It appears that the court felt that each of the submarkets mentioned was an appreciable segment of the market within which the merging companies were effective competitors primarily because of the large percentage of total industry shipments and of Bethlehem and Youngstown shipments into those submarkets. We consider it significant that the court stated:

> "Of course, the national market for a product like steel is not the national market which exists for a product like cigarettes." (168 F. Supp. 576 at Page 601.)

Recognizing, we believe, that the market for a product like cigarettes was fairly uniform throughout the nation, in which case the nation as a whole would clearly be the relevant market area, while the demand for steel, and iron and steel industry products, was localized or concentrated in various industrialized pockets of the nation. We consider that the beer market resembles the cigarette market more than the steel market in that the record reveals that the use of beer is nation-wide, its sales are not limited primarily to states having any particular industry and no state or area can be said to be predominant in the sales or consumption of beer. The market for beer, unlike the market for steel, is not concentrated. We note also that in *Bethlehem Steel*, the northeast quadrant of the United States had 83% of national steel consumption, the four-state area of Michigan, Ohio, New York and Pennsylvania received 48.4% of the total industry shipments of common finished steel products, Michigan and Ohio received 31.3% of those shipments, Michigan received 18.2% of those shipments and Ohio received 13.1% of those shipments. In contrast, as noted previously, Wisconsin

consumed only between 3.66% and 3.75% of the total beer consumed in the nation during the years 1957 through 1961, a rate of consumption which, in our opinion does not set it aside as an area in which the beer market is concentrated.[9]

We find no merit in the plaintiff's contention that Wisconsin is a relevant market area because the most intense competition between Pabst and Blatz before the acquisition existed in Wisconsin. Pabst and Blatz competed throughout the nation as the plaintiff, in claiming that the continental United States is an appropriate section of the country, admits. In 1957, in competing in Wisconsin, they were competing for only 3.66% of the nation's consumption. As to that 3.66% segment, it is true, they realized considerable success, Pabst selling 340,378 of its total national sales of 2,548,452 barrels of beer in Wisconsin and Blatz selling 388,678 of its total national sales of 1,239,334 in Wisconsin and Pabst selling 11.14% and Blatz 12.81% of all beer sold in Wisconsin. We cannot say, however, from the fact that Pabst and Blatz beers found acceptance in Wisconsin, that the most intense competition between them existed in that state. We have no basis in the record for finding that the degree of success attained by

[9] In determining the relevant geographic market for the beer industry, we consider sales data, and not production data, to be controlling. As the Supreme Court stated in *Philadelphia Bank*, quoting *Tampa Electric* v. *Nashville Coal Co.*, 365 U.S. 320, the area of effective competition is the market area in which the seller operates and to which the buyer can practicably turn for supplies. Production figures can, of course, be extremely meaningful where evidence reveals that the production locale affects sales, for example where transportation costs are so high as to limit sales to an area near the place of production, but no evidence in this case establishes that the location of any brewery affects or limits the area in which the seller operates or to which the buyer turns for supplies.

the companies reflected the intensity of the competition between them.[10] And, as we noted before, the percentage of Pabst or Blatz sales in Wisconsin did not approach the percentage of St. Helens' sales in the Pacific coast states in the *Crown Zellerbach* case, cited by the plaintiff on this point.

Neither do we agree with the plaintiff's contention that Wisconsin is a significant market area "because of its important position in the beer industry as a whole." (Page 7, Government's Brief in Opposition to Defendant's Motion To Dismiss.) In support of this contention, the plaintiff has pointed to production data contained in its exhibits and compared some of the production percentages to consumption percentages in the *Bethlehem Steel* case. Unquestionably, Wisconsin produced and exported a substantial amount of beer before at the time of and since the acquisition of Blatz by Pabst and a sizable number of breweries operated in that state. As we stated previously, however, this production data, while interesting, does not define a relevant geographic market where there is no proof that the place of production in any manner affects sales. Absent such proof, the plaintiff's comparison of Wisconsin beer *production* figures with steel *consumption* figures in the *Bethelehem Steel* case is not apt. As we also stated previously, the figures presented relative to consumption of beer in Wisconsin are not such as to render Wisconsin a significant market area.

The plaintiff has also argued that Wisconsin (and incidentally every state) is a separate market area in the beer industry because Wisconsin (and every state)

[10] The figures introduced by the plaintiff as to the amounts spent by Pabst and Blatz for national and Wisconsin advertising can be given little weight particularly since no evidence as to Blatz expenditures prior to the aquisition were offered.

is free to regulate that industry and has, in fact, "enacted a complex system of laws which have the effect of making each state a separate and distinct market for competition in the beer industry." (Page 8, Government's Brief In Opposition To Defendant's Motion To Dismiss.) Exhibits introduced in support of this argument establish that states have enacted laws relative to alcoholic content permissible in beer sold within their boundaries, packaging and labelling of beer, etc., which laws must, of course, be respected. The plaintiff admits that the state regulations are common to all breweries and do not make it impossible to sell beer within different states. The fact that beer is sold throughout the United States reveals that the laws of the various states do not deter competitors. The most that can be said is that all competitors are bound by state regulations, must observe them while engaging in competition, and must and do make appropriate adjustments in their procedures in various states to observe them properly. We do not consider it necessary to discuss the evidence as to state regulations introduced by the plaintiff in detail. The plaintiff has admitted that it has no authority for its position that state regulations create separate market areas and we hold that state regulations, equally burdensome on all competitors, which do not prevent or deter competition, do not perforce render every state, including Wisconsin, a separate market area.

While the plaintiff contends that Pabst has recognized Wisconsin to be a unique market by pricing Blatz beer higher in Wisconsin than elsewhere since the acquisition, during which period more Blatz beer was sold in Wisconsin than in any state except Michigan it has presented proof as to the price of only one type of package and has presented no argument and

cited no authority to convince us that this price factor is of any moment in ascertaining the relevant geographic market.

We have also considered the plaintiff's contention that Wisconsin is a relevant geographic market because it is unique in that its per capita consumption of beer is higher than any other state, its consumption of draught beer is high and "it is the center of the small, locally owned breweries remaining in this country." (Page 13, Government's Brief In Opposition To Defendant's Motion To Dismiss.) We are not satisfied that such uniqueness marks Wisconsin as a separate market area. Despite its high per capita consumption of beer, Wisconsin, with its 3.66% of the nation's consumption of beer in 1957, was not an appreciable segment of the market. And we are not at all certain that per capita consumption statistics relative to a product which, by its very nature, cannot be sold to the population at large, but only to adults, are of any value. They may be of aid in determining consumer characteristics but not in defining a market area. The plaintiff has given no reason for considering draught beer separately in determining a market area. The stipulated line of commerce in this case is the beer industry and we cannot single out or place any reliance on statistics regarding draught beer, a division of the product involved, without sufficient reason. As we have stated previously, the location of production facilities has not been shown to affect the market area. In like manner the location of a number of small competitors in Wisconsin has not been shown to make Wisconsin a relevant geographic market.

We hold that the plaintiff has not shown that Wisconsin as a geographic market corresponds to the commercial realities of the beer industry or is economically significant, nor has it shown that Wisconsin

is an appreciable segment of the market in the beer industry.

THE THREE STATE AREA

After the defendant Pabst filed its motion to dismiss and indicated its intention to press that motion, the court directed the parties to file briefs. Because the plaintiff had the burden of proof with respect to the only contested issues, it was directed to file the opening brief, disclosing to the court and to the defendant how it claimed to have satisfied that burden.[11] In its opening brief, its discussion of the facts relative to its position that the three state area is a section of the country within which the effect of the acquisition of Blatz by Pabst should be examined is limited to the following paragraph at Pages 13 and 14:

> "In regard to the three-State area of Wisconsin, Illinois, and Michigan, in which the Government has also asked the Court to measure the effects of the merger, it is sufficient to point out that its importance rests on the same factors that make Wisconsin a relevant market. By adding the States of Illinois and Michigan to Wisconsin, the Court may see the effects of the merger in a larger, therefore more 'appreciable' segment of the national market. In 1957 Pabst made 30.5 percent of its sales in the area (JX 55), and ranked seventh with 5.48 percent of the market (JS 91). In that year Blatz made 66.7 percent of its sales in the area (JX 55), and ranked sixth with 5.84 percent of the market (JX 91). Forty-two percent of the combined sales of the two companies was made in the area (JX 55), and together they ranked second with 11.32 percent of the market (JX 91)."

[11] Some clarification of the plaintiff's position was necessary since most of the exhibits comprising the plaintiff's case had been introduced into evidence with no explanation whatsoever.

No further discussion on this point is contained in its reply brief, nor did the plaintiff amplify its position on oral argument. It appears therefore that the plaintiff itself relies solely on the revelations in Exhibits 55 and 91 as to percentages of Pabst and Blatz sales in the three state area and Pabst and Blatz shares of the market as satisfying its burden of proof and considers no other facts relevant on this issue.

Exhibit 55 reveals that of the 2,548,452 barrels of beer sold by Pabst in the continental United States in 1957, 361,579 barrels were sold in Illinois, 74,928 barrels were sold in Michigan, and 340,378 barrels were sold in Wisconsin, a total of 776,885 barrels [12] or approximately 30.5% of Pabst's total sales in the continental United States being sold in the three state area. It further reveals that Blatz sold 1,239,334 barrels of beer in 1957, and that 139,707 of those were sold in Illinois, 298,672 in Michigan and 388,678 in Wisconsin, a total of 827,057 barrels,[13] or approximately 66.7% of Blatz's sales in the continental United States, being made in the three state area.

Exhibits 91 and 92 reveal that in 1957, 14,230,609 barrels of beer were sold in the three state area by a total of 104 breweries. Blatz was the sixth largest seller with 5.84% of the market and Pabst ranked seventh with 5.48% of the market.

The plaintiff apparently contends that the bulk of Pabst and Blatz sales occurred in the three state area with the result that the most intense competition between them was in that area, therefore that is a relevant market area. Unquestionably, both Pabst and Blatz were successful in the three state area.

[12] Exhibit 91 shows sales of 779,234 barrels by Pabst in the three state area in 1957.

[13] Exhibit 91 shows sales of 831,527 barrels by Blatz in the three state area in 1957.

However, we find no precedent for permitting the plaintiff to select an area in which the two companies, which competed nationally, realized success and, solely because of that success, designate the area a relevant geographic market. In our opinion, in this case where the companies involved concededly competed nationally, the plaintiff, in order to satisfy its burden of proving that the three state area is a relevant geographic market, must demonstrate something beyond the fact that isolation of that area from the national market would result in percentages favorable to its position. It must first demonstrate that under the "commercial realities" of the beer industry, Illinois, Michigan and Wisconsin is a relevant market area. No such proof is in the record.

The Plaintiff Has Not Satisfied Its Burden of Proving That the Effect of the Acquisition of Blatz by Pabst May Be Substantially To Lessen Competition or To Tend To Create a Monopoly in the Beer Industry in the Continental United States, the Only Relevant Geographic Market

Having held that neither Wisconsin nor the three state area of Wisconsin, Illinois and Michigan is a relevant geographic market, we must now determine whether in the continental United States, the stipulated relevant market area, the effect in the beer industry of the acquisition of Blatz by Pabst may be that prohibited by § 7 of the Clayton Act, which does not prohibit all such acquisitions but only those the effect of which "may be substantially to lessen competition, or to tend to create a monopoly."

The plaintiff has the burden of proving that there is a reasonable probability that the acquisition may have the proscribed effect. In order for the plaintiff to satisfy its burden it must present either evi-

dence sufficient to support a finding that the acquisition, a fait accompli when this action commenced, already had that effect or evidence sufficient to supply a basis for a finding and prediction that a reasonably probable consequence of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the future. As the Supreme Court noted in the *Brown Shoe* case;

> "the very wording of § 7 requires a prognosis of the probable *future* effect of the merger" (370 U.S. 294, at Page 332)

and:

> "It is the probable effect of the merger upon the future as well as the present which the Clayton Act commands the courts and the Commission to examine." (370 U.S. 294, at Page 333.)

In our opinion the evidence introduced by the plaintiff does not satisfy its burden.

The plaintiff appears to contend that it has demonstrated that the acquisition may substantially lessen competition or tend to create a monopoly in the continental United Sates by (1) statisical evidence as to the market share controlled by Pabst as a result of the acquisition, (2) statistical evidence showing a trend toward concentration in the brewing industry, and, (3) evidence as to the "vertical effects" of the acquisition on distributors of beer and on maltsters. We shall discuss first the evidence referred to in Points 1 and 2, reserving until later consideration of evidence relating to distributors and maltsters.

In 1934, the first full year of beer production after the repeal of prohibition, there were 714 breweries in the United States. In 1935, the number of breweries increased to a peak of 750 and it thereafter declined so that in 1957 there were 264 breweries and

by 1961 the number of breweries in the United States was 229. Thus, during the period from 1935 through 1961 there was a 69.47% decline in the number of breweries operating in the United States. During that same period in the continental United States there was a fairly steady increase in taxpaid withdrawals of beer from 39,654,720 barrels in 1934 to 84,288,580 barrels in 1957, to 88,976,417 barrels in 1961. Consumption of beer increased fairly steadily from 35,862,145 barrels in 1934 to 83,779,609 barrels in 1957, to 88,485,795 barrels in 1961, and production of beer increased fairly steadily from 47,735,901 barrels in 1935 to 89,382,923 barrels in 1957, to 94,972,948 barrels in 1961.

In its exhibits 32 through 46, the plaintiff has listed the breweries selling beer in the United States for each of the years 1957 through 1961,[14] and the ranking of each brewery and its percentage of sales for those years. In 1957, sales of beer were made in the United States by 206 breweries. Twenty-seven breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff made over 5% of sales and two, Ballantine and Hamm, sold more than 4%, but less than 5%. Pabst ranked tenth in sales with 3.02% and Blatz ranked eighteenth with 1.47%, a combined total of 4.49%. The top ten breweries in that year had 45.06% of sales and the top twenty-five had 68.99% of sales. In 1958, 191 breweries sold beer in the United States. Twenty-six breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff made over 5% of sales and three, Ballantine, Carling and Hamm sold more than 4% but

[14] The number of breweries listed differs from the number shown in Exhibits 212 and 213. No explanation of this variance has been offered. Probably Exhibits 212 and 213 refer to brewing premises while Exhibits 32 through 46 to brewing companies.

less than 5%. Pabst ranked eleventh in sales with 2.67% and Blatz ranked thirteenth with 2.04%, a combined total of 4.71%. The top ten breweries in that year had 46.06% of sales and the top twenty-five had 70.71% of sales. In 1959, 177 breweries sold beer in the United States. Twenty-six breweries made 1% or more of the sales, three, Anheuser-Busch, Schlitz and Falstaff, made over 5% of sales and four, Carling, Ballantine, Pabst (with the addition of Blatz) and Hamm, sold more than 4% but less than 5%. Pabst, with its acquisition of Blatz, ranked sixth with 4.79%, slightly more than the combined total of the two companies the preceding year. The top ten breweries had 49.51% of sales and the top twenty-five had 73.44% of sales. In 1960, 171 breweries sold beer in the United States. Twenty-seven breweries made 1% or more of the sales, four, Anheuser-Busch, Schlitz, Falstaff and Carling, made over 5% of sales, and three, Ballantine, Pabst (with the addition of Blatz), and Hamm sold more than 4% but less than 5%. Pabst combined with Blatz ranked sixth with 4.98%. The top ten breweries had 50.75% of sales and the top twenty-five had 74.83% of sales. In 1961, 162 breweries sold beer in the United States. Twenty-five breweries made 1% or more of the sales, six, Anheuser-Busch, Schlitz, Pabst (with the addition of Blatz), Falstaff, Carling and Ballantine, made over 5%, of sales and one, Hamm, sold more than 4% but less than 5%. Pabst combined with Blatz ranked third with 5.83%. This increase in Pabst's rank and market share between 1960 and 1961, the only sizable increase over the combined market share of Pabst and independent Blatz in 1957, has not been connected by the plaintiff in any way with its acquisition of Blatz in 1958. The top ten breweries in 1961 had 52.60% of sales and the top twenty-five had 76.96% of sales.

In 1948, the top ten brewing companies in the United States sold 32.68% of the beer sold in the United States and the top twenty-five sold 49.2%.

MARKET SHARES

It is true, as argued by the plaintiff, that in the *Brown Shoe* case, in discussing the horizontal aspects of the merger involved on the retailing level, the Supreme Court recognized the significance of market shares as a factor in predicting the probable effect of a merger on competition stating:

> "The market share which companies may control by merging is one of the most important factors to be considered when determining the probable effects of the combination on effective competition in the relevant market." (370 U.S. 294, at Page 343.)

However, it also stated in discussing the vertical aspects of the merger that:

> "* * * an important consideration in determining whether the effect of a vertical arrangement 'may be substantially to lessen competition, or to tend to create a monopoly' is the size of the share of the market foreclosed. *However, this factor will seldom be determinative.* If the share of the market foreclosed is so large that it approaches monopoly proportions, the Clayton Act will, of course, have been violated; but the arrangement will also have run afoul of the Sherman Act. And the legislative history of § 7 indicates clearly that the tests for measuring the legality of any particular economic arrangement under the Clayton Act are to be less stringent than those used in applying the Sherman Act. On the other hand, foreclosure of a *de minimis* share of the market will not tend 'substantially to lessen competition.'

> *"Between these extremes, in cases such as the one before us, in which the foreclosure is neither of monopoly nor de minimis proportions, the percentage of the market foreclosed by the vertical arrangement cannot itself be decisive. In such cases, it becomes necessary to undertake an examination of various economic and historical factors in order to determine whether the arrangement under review is of the type Congress sought to proscribe."* [Emphasis added.] (370 U.S. 294, at Pages 328–329.)

With respect to the horizontal aspects of the merger on the retailing level, the Supreme Court considered many factors in addition to market shares.

In the *Philadelphia Bank* case, the Supreme Court held that the percentage of the market controlled as a result of a merger may be of such size as to raise an inference that the merger may substantially lessen competition, that "With respect to mergers whose size makes them inherently suspect" (374 U.S. 321 at Page 363) proof of market shares alone on the part of the Government would be sufficient to shift to the opposing parties the burden of proving that the merger is not likely to have anticompetitive effects and that proof of control of 30% of the market as a result of a merger was sufficient to raise an inference that the merger would substantially lessen competition.

The plaintiff apparently realizes that the share of the market controlled by Pabst in the continental United States, which we have held to be the only relevant geographic market, as a result of the acquisition of Blatz is not itself of such dimensions as to raise an inference that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly. In presenting its market share argument in its brief, it concentrates on Wisconsin

and to a minor extent on the three state area, and, when it discusses the continental United States, ties this argument in with its second point—that the brewing industry is tending toward concentration, and its third point—the vertical effects of the acquisition. Thus, on Page 18 of the brief in opposition to the motion to dismiss, it argues:

> "In the United States market, Pabst made a phenomenal rise from eleventh place in total sales to third place in three years. Pabst rose from 2,254,001 barrels to 4,194,321 barrels in 1959 and continued upward to 5,192,062 barrels in 1961 and thus more than doubled its sales in that short period of time (JX 35–JX 44, JX 47–JX 59, GX 209).
>
> "Just consider what was happening in this market: The eleventh largest United States brewery bought the eighteenth largest and in a space of three years became the third largest in sales; from 2.67 per cent of that market it almost doubled its market share to become 4.98 per cent. The effect in these areas is sufficient to establish a probable lessening of competition under Section 7, *especially when considered in conjunction with vertical effects, and the general context of the industry. In an industry containing a number of vulnerable small businesses, which were subject to an accelerating trend toward competition,* [*sic*] the Supreme Court, in the *Brown Shoe* case, found illegal a merger which would have given Brown Shoe Co. control of only 4½ per cent of national shoe production,[15] and 7.2 per cent of the nation's shoe stores." [Emphasis added.]

[15] This reference is grossly misleading since in *Brown Shoe* it was held that the merger of Brown's and Kinney's manufacturing facilities with 4% and 0.5% of the market, was economically too insignificant to come within the prohibitions of the Clayton Act.

The "phenomenal rise" to which the plaintiff refers was actually an increase in Pabst's market share from 3.02% in 1957 and 2.67% in 1958 to 4.79% in 1959, an increase which can be almost completely accounted for by the addition of Blatz's market share to that of Pabst. This resultant percentage of the United States market is not in and of itself an "effect * * * sufficient to establish a probable lessening of competition under Section 7." In our opinion, proof that Pabst had a 4.79% of the market after the acquisition in 1959, which percentage had grown to a 5.83% in 1961, is not sufficient to establish that the acquisition is inherently likely to lessen competition under the rule of the *Philadelphia Bank* case, nor that Pabst and Blatz were major competitive factors comparable to the consolidating banks in the *Lexington Bank* case. This is not a case in which the plaintiff can shift to Pabst the burden of proving the absence of probable anticompetitive effects in the continental United States by proof of market shares alone. We must therefore determine whether the additional documents offered by the plaintiff relative to the probable effect of the acquisition, that is, documents which the plaintiff believes prove a trend toward concentration in the brewing industry and a reasonable probability of anticompetitive vertical effects, present evidence sufficient to put the defendant Pabst to its proof.

Trend Toward Concentration

The only proof in the record relating to the plaintiff's position that the brewing industry has experienced a trend toward concentration is statistical evidence establishing that (1) the number of breweries in the United States has decreased, (2) production, consumption and taxpaid withdrawals of beer have increased, and (3) the percentage of the market shared

by the top ten and top twenty-five breweries has increased. This statistical showing absolutely fails to establish a trend toward concentration in the beer industry. In the absence of any showing to the contrary, it must be concluded that all three factors are the result of operation of normal competitive forces, and we do not understand the plaintiff to urge that in enacting § 7 Congress wished to interfere with those forces.

Our interpretation of the authorities cited by the plaintiff, the *Bethlehem Steel* case, the *Brown Shoe* case, and the *Philadelphia Bank* case, is not that Congress, in enacting § 7, was attempting to stifle or immobilize successful competitors or to secure for those who did not wish to compete or for failing competitors—those who could not compete because of inferior products, management, etc.—a place in the market. Rather, it wished to prevent overzealous competitors from enhancing their positions to the detriment of competition by mergers or acquisitions. The type of concentration § 7 was designed to avoid was concentration resulting from mergers and acquisitions, not increases in market shares resulting from superiority of product or services. Judge Weinfeld stated in the *Bethlehem Steel* case in discussing Congressional intent relative to concentration that the objective of Congress was:

> "to limit future increases in the level of economic concentration *resulting from corporate mergers and acquisitions.*" [Emphasis added.] 168 F. Supp. 576 at Page 583.

And at Page 604 of that case, Judge Weinfeld said:

> "A major purpose of section 7 is to ward off the anticompetitive effects of increases 'in the level of economic concentration *resulting from corporate mergers and acquisitions*'. Both the Senate and House Committee Reports empha-

sized the deep concern of the Congress with the continued trend towards concentration of economic power *through mergers and acquisitions.*" [Emphasis added.]

In *Brown Shoe,* the Supreme Court, discussing the trend toward concentration in the shoe industry, spoke not of a mere lessening in the number of competitors but of a history of acquisition by manufacturers of retail outlets, of combinations and of mergers. In a footnote, the Court said:

> "A company's history of expansion through mergers presents a different economic picture than a history of expansion through unilateral growth. Internal expansion is more likely to be the result of increased demand for the company's products and is more likely to provide increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive acquisitions. Section 7 was enacted to prevent even small mergers that added to concentration in an industry." (370 U.S. 294, at Page 345.)

In *Philadelphia Bank* too, the Supreme Court, speaking of a trend toward concentration in commercial banking, referred to a record showing the disappearance during one decade of 1601 independent banks, 1503 of which disappeared as the result of mergers, and to a prior history of mergers in the Philadelphia area.

The plaintiff herein, upon which rests the burden of proof, however, has shown no "trend toward concentration" in the beer industry, as that term has been used in the authorities upon which it relies. So far as the record discloses, not a single merger or acquisition in the beer industry preceded the acqui-

sition of Blatz by Pabst and the decrease in the number of breweries resulted from the play of natural economic forces. No contrary showing having been made, we must hold that no trend toward concentration has existed in the beer industry.[16]

Vertical Effects of the Acquisition on Maltsters

In Paragraph 17 of its complaint and in a more definite statement with respect thereto, the plaintiff alleges that malt, a primary ingredient in the brewing process, is produced by Pabst for use in its own breweries and in the manufacture of other products, that prior to its acquisition by Pabst, Blatz purchased its malt requirements from outside sources, that prior to the acquisition Pabst's malt capacity exceeded its own needs, that after the acquisition Blatz brand beer contained only Pabst produced malt and no malt purchased from outside sources and that the acquisition harmed independent malt suppliers by cutting off Blatz as a market and harmed independent breweries by depriving them of a potential supply of Pabst produced malt. In its answer Pabst admits that malt is a primary ingredient in the brewing process and is produced by Pabst for use in its own breweries and in the manufacture of other products, and that prior to the acquisition Blatz purchased its malt from suppliers. The plaintiff was put to its proof on the remaining allegations.

The plaintiff's proof consisted of Exhibits 116 and

[16] Of course the acquisition in question could conceivably violate § 7 even if it were the first in the beer industry. However, since the plaintiff has proved no trend toward concentration we cannot, in determining the probable effect of the acquisition, view it against a backdrop of concentration as the plaintiff urges.

117, answers to interrogatories which had been submitted by the plaintiff to Pabst. Exhibit 117 establishes that in 1957 Blatz purchased a total of $2,105,845.05 worth of malt from seven suppliers and in the first seven months of 1958 its malt purchases from eight suppliers amounted to $1,609,037.43. Exhibit 116 establishes that in 1957, Pabst purchased $515,066.78 worth of malt from outside suppliers, in 1958 it purchased $2,277,945.02 worth of malt from outside suppliers and in 1959 it purchased $1,768,779.17 worth of malt from outside suppliers. Some of the malt purchased in 1958 was purchased at the Blatz premises, but none of the malt purchased in 1959 was purchased at the Blatz premises.[17]

Nothing in Exhibits 116 and 117 tends to prove the plaintiff's allegations that Pabst's malt capacity prior to the acquisition exceeded its own needs, or that since the acquisition Blatz brand beer has contained only Pabst produced malt. Neither is there any proof that the acquisition harmed independent breweries by depriving them of a potential source of supply for malt from Pabst's malt producing facilities.[18] The plaintiff appears to recognize these deficiencies in its brief since it directs no argument toward those allegations.

It is true as the plaintiff contends that no malt was purchased from independent maltsters for the Blatz plant in 1959. However, Exhibit 116 reveals that Pabst purchases of malt from independent maltsters for its four breweries in 1959 exceeded by over

[17] As stated previously, the Blatz premises went on a shutdown status in 1959. Brewing at that plant ceased prior to February 20, 1959.

[18] There is no indication that Pabst ever sold malt or had the potential to sell it or, if it was a potential source of supply for independent breweries, that the acquisition of Blatz interfered with that potential.

$1,250,000 its 1957 purchases. Since Blatz brand beer was being brewed in Pabst plants in 1959 it is a fair assumption that Pabst had to increase its purchases of malt to brew Blatz brand beer.

The plaintiff states in its brief that it has clearly demonstrated that the maltsters selling malt to Blatz in the eighteen months prior to the acquisition lost the entire market represented by the Milwaukee-Blatz Brewery and that this loss of over two million dollars of business is a serious matter for them. This argument is a distortion since it ignores the increase in Pabst malt purchases after the acquisition. We do not consider it of any importance that some of the Pabst suppliers of malt were different from those who formerly supplied Blatz and that some of the former Blatz suppliers sold no malt to Pabst in 1959. Pabst purchased from independent suppliers and as far as the record reveals all were free to compete for its business. Just as Blatz prior to the acquisition could have changed suppliers if it desired, so also Pabst was not bound by any dictates of the Clayton Act to purchase only from former suppliers to Blatz.

The record with respect to maltsters reveals only that independent maltsters sold less malt for brewing Pabst and Blatz brand beers in 1959 than in 1957. On this meager record, unsupported by any testimony, we cannot hold that the impact on independent maltsters of the acquisition was significant. And the facts herein are so dissimilar from those in the *Bethlehem Steel* case relied upon by the plaintiff that no discussion thereof is warranted. We need only say that here the acquired company sold no ingredients (malt—rope wire) to third parties and bought back no finished product (beer—wire rope) from third parties.

We have also considered the rather inconsistent

arguments advanced by the plaintiff that (1) suppliers of malt have been adversely affected by the acquisition because Pabst and Blatz, which used to compete in their purchases, no longer compete,[19] and (2) Blatz is now part of an integrated company with a competitive advantage over non-integrated breweries.[20] These arguments are contained in two unenlightening paragraphs at Pages 25 and 26 of the plaintiff's brief in opposition to the motion to dismiss.

As stated before, the only evidence in the record relative to malt is Exhibits 116 and 117, neither of which in any way defines the malt industry or the nature of competition therein or reveals that there is benefit to a brewer in being integrated as to its supply of malt even if integration be shown. These arguments are based on nothing but surmise, and manifest no reasonable probability of anticompetitive effects in either the beer industry—the only line of commerce involved herein—or the malt industry.

Vertical Effects of the Acquisition on Distributors

It is the position of the plaintiff that immediately after its acquisition of Blatz, Pabst established a policy of consolidating Pabst and Blatz distributors and that cancellation of a distributor and the throwing of Pabst and Blatz brands into a consolidated distributorship lessens competition in the sale of beer by depriving the cancelled distributor of his source of supply and by lessening the number of competing distributors, thereby lessening competition

[19] This argument indicates that the plaintiff believes that Pabst's competitive position in purchasing malt has been enhanced.

[20] This argument indicates that the plaintiff believes no malt need be purchased.

among distributors."[21] The plaintiff further argues that a potential lessening of competition between distributors occurred in areas where only one brand was distributed prior to the acquisition and where after the acquisition the existing distributor distributed both brands because, absent the acquisition, another distributorship might have been established.

We know from the record that distributors are important since approximately 80% of Pabst beer was sold through them prior to the acquisition and between 75% and 80% of Blatz beer was sold through them both before and after the acquisition.[22] We also know from the record that "the vast majority" (Page 100 of Transcript) of distributors handle more than one brand of beer. Beyond that we know nothing of the nature and function of distributorships in general—their relationship to breweries they represent, their contract rights, if any, their dependence or lack of dependence upon a particular brand, the nature of competition, if any, among them, the number of distributorships and the number of Pabst and/or Blatz distributorships in existence, etc. With these glaring voids in the proof, we must hold that the plaintiff has not shown that any probable effect of the acquisition on distributors may be substantially to lessen competition or to tend to create a monopoly in the beer industry.

The facts in the *Bethlehem Steel* case, from which the plaintiff has quoted the following statement as authority for its position:

> "A horizontal merger can affect competition in at least two ways. It can have an impact not

[21] The documentary evidence established that eight distributorships were lost by consolidation after the acquisition.

[22] The record does not reveal how the remaining beer was sold.

> only on the competitors of the merged companies but also on the buyers who must rely upon the merged companies and their competitors as sources of supply" (168 F. Supp. 576, at Page 588.)

and the facts in *Crown Zellerbach,* which it cited on oral argument, do not resemble those in the case at bar, since beer distributors handle more than one brand of beer and have numerous alternate sources of supply.

Conclusion

In presenting its case, the plaintiff has deliberately chosen to rely on documentary, primarily statistical, evidence and, to a very minor extent, on excerpts from depositions. It has failed completely to present any information, other than statistics, concerning the structure, history and probable future of the market which would, in the words of *Brown Shoe* "provide the appropriate setting for judging the probable anti-competitive effect of the merger." (370 U.S. 294, at Page 322.) It has offered no testimony from either economists or experts in the beer industry in support of its position as to the relevant geographic market. It has failed to produce a single brewer, maltster, or distributor, or any person knowledgeable in this industry, in support of its position that the effect of Pabst's acquisition of Blatz may be that proscribed by § 7. Under these circumstances, and for the reasons heretofore set forth, we must hold that the plaintiff has shown no right to relief. The motion of the defendant Pabst for dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure must therefore be granted.

Counsel for the defendant, Pabst, will prepare findings of fact and conclusions of law pursuant to this Opinion, and submit them to counsel for the plaintiff for approval as to form.

Dated, Milwaukee, Wisconsin, this 22d day of September 1964.

ROBERT E. TEHAN,
U.S. District Judge.

APPENDIX B

United States District Court, Eastern District of Wisconsin

Civil Action No. 59 C 215

(Filed October 13, 1964)

UNITED STATES OF AMERICA, PLAINTIFF

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANT PABST BREWING COMPANY FOLLOWING OPINION OF SEPTEMBER 22, 1964

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Dated: October 9, 1964.

FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANT PABST BREWING COMPANY FOLLOWING OPINION OF SEPTEMBER 22, 1964

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I. JURISDICTIONAL MATTERS; THIS LITIGATION

A. *The Parties, the Acquisition, and the Issues*

1. Defendant Pabst Brewing Company (hereinafter referred to as "Pabst") [1] is a corporation organized and existing under the laws of Delaware (Answer, paragraph 3).

2. Defendant Schenley Industries, Inc. (hereinafter referred to as "Schenley") is a corporation organized and existing under the laws of Delaware (Answer, paragraph 4). Prior to July 30, 1958 Schenley wholly owned a subsidiary known as Blatz Brewing Company (hereinafter referred to as "Blatz"). Subsequent to July 30, 1958 the name of this subsidiary

[1] The words "Pabst" and "Blatz" are used generally to describe only the companies, but the words also describe the brands of beer sold by the companies and are sometimes used in that sense.

was changed to Val Corporation (Answer, paragraph 6).

3. On or about July 30, 1958, Pabst acquired the assets and business of Blatz Brewing Company for $11,000,000 in cash (plus adjustments for Blatz profits from May 31 to July 31, 1958), $3,500,000 in debentures, 200,000 shares of its common capital stock and common stock purchase warrants for an additional 350,000 shares of such stock (Answer, paragraph 19). Thereafter, Pabst Sales Company, a wholly-owned subsidiary of Pabst, amended its corporate charter, changed its name to Blatz Brewing Company, and on February 27, 1959 was merged into Pabst (Answer, paragraph 6).

4. The complaint was filed by plaintiff, the United States of America, October 1, 1959 and alleged that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in three areas, the United States, the state of Wisconsin, and the three-state area of Wisconsin, Illinois and Michigan, in violation of Section 7 of the Clayton Act (Complaint, paragraph 19). The court was asked to adjudge the acquisition illegal and order Pabst to divest the business and assets of Blatz (Complaint, Prayer for Relief, paragraphs 1 and 2). On May 9, 1960 plaintiff filed a motion for a preliminary injunction which was settled by an agreed order of June 6, 1960.

5. An intensive pretrial program produced considerable agreement among the parties. Prior to the time of trial, it was agreed that the only line of commerce involved is the beer industry, i.e., the production, distribution and sale of beer, and that it did not include the production, sale or distribution of the ingredients of beer nor any sale or distribution

of draft or packaged beer as a separate line of commerce (Orders Following Pretrial Conferences of January 15, 1962 and October 12, 1962). Jurisdiction and venue were admitted by Pabst, as was the fact that both Pabst and Blatz sold beer in interstate commerce prior to the acquisition and Pabst continued to do so thereafter (Answer, paragraphs 1, 2, 8 and 9). The parties had also agreed that the continental United States [2] as a whole was a relevant section of the country.

6. Several issues remained, however. Pabst denied that the state of Wisconsin or the three-state area of Illinois, Wisconsin and Michigan was a relevant section of the country as that term is used in Section 7 of the Clayton Act (Answer, paragraphs 13, 14, 16 and 19). Issue was likewise joined as to whether the acquisition might substantially lessen competition or tend to monopoly in any of the alleged sections of the country. Pabst denied all plaintiff's allegations as to probable anti-competitive effects of the acquisition in any of the areas advanced by the plaintiff as relevant (Answer, paragraph 19), alleging rather that the acquisition's purpose was to avoid the consequences of Pabst's declining sales and increasing losses [3] and its effect was to preserve and promote competition in the beer industry (Answer, paragraph 19).

7. Plaintiff thus had the burden of proving at the trial its allegations that Wisconsin and the three-state

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[2] As used herein the "continental United States" or "United States" or "country as a whole" refers to the forty-eight states and the District of Columbia excluding Alaska and Hawaii. Likewise, the general term "state" includes the District of Columbia but excludes Alaska and Hawaii.

[3] Plaintiff's motion to strike this failing enterprise defense contending that the defense was available only to an acquired firm was denied by this court's order of March 31, 1961.

area of Wisconsin, Illinois and Michigan each is a section of the country within which the effects of the acquisition are to be examined; and that, within the continental United States, and, if it sustained its burden of proving Wisconsin or the three-state area a relevant geographic market, within one or both of these areas, the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the beer industry.

B. *Pretrial Occurrences*

8. After issue was joined, numerous pretrial conferences were held to expedite discovery and prepare this case for trial on the contested issues. It was determined that liability would be decided before any hearing on the type of relief, if any, to be afforded (See Memorandum Decision dated April 7, 1960, page 3). Pursuant to pretrial procedures, plaintiffs and Pabst each disclosed to the other party its theory of the case, the documents on which it intended to rely during the trial of the case, the names of the witnesses who would be called, and the nature of the testimony to be expected from each witness. Plaintiff revealed that its representatives had interviewed 208 brewers, 164 distributors and 32 maltsters of whom 71 were listed as witnesses who would testify for plaintiff and who would produce documents at the trial which might be introduced in evidence (Plaintiff's Further Response to Pretrial Order filed January 10, 1962). During the summer of 1962, pretrial subpoenas duces tecum were issued to these 71 witnesses: 39 brewers, 24 distributors and 8 maltsters. Pursuant to these subpoenas, documents concerning the purchase and sale of beer and malt by nearly all of these witnesses, or affidavits in lieu thereof, were made available for

examination by both plaintiff's and Pabst's counsel in Milwaukee (Agreed Order entered April 4, 1962).

9. Based in part on plaintiff's expressed intention to call 71 witnesses, it was estimated that the trial would require approximately two months; and, despite the fact that trial was twice rescheduled between the original pretrial order of May 7, 1963 setting the case for trial on October 14, 1963 and the final trial date of January 27, 1964, no change was made in the time of trial estimate nor in plaintiff's statement of intention to call 71 witnesses.

10. On January 3, 1964, plaintiff and Pabst each petitioned for and was granted authority to issue subpoenas to witnesses residing more than 100 miles from Milwaukee and outside this district. In the plaintiff's motion requesting such order and its pretrial brief filed on January 13, 1964, plaintiff's counsel stated that these witnesses possessed evidence which was material to the issues, and that their testimony was necessary to establish the allegations of the complaint. The court was exhorted to pay close attention to such witnesses at the trial because of their intimate knowledge of actual competitive conditions in the industry and these witnesses were further characterized as the best source of help for the court in predicting the future of the industry resulting from the merger which must necessarily be done in Section 7 cases (Plaintiff's Motion for Subpoenas filed January 3, 1964; Plaintiff's Pretrial Brief filed January 13, 1964, pp. 27–28).

11. At the final pretrial conference on January 13, 1964, plaintiff's counsel reaffirmed its intention to call witnesses and agreed to furnish a weekly list of witnesses and the order of their expected appearance by Wednesday of the preceding week. The order respecting this agreement was received and signed

by the court on January 20, 1964, but on January 23, 1964, two court days before trial was to commence the court received a letter from the counsel for the plaintiff dated January 22, 1964 stating that the plaintiff would call no witnesses at all at the trial.

C. *The Trial*

12. The trial began on January 27, 1964 at 10:45 A.M., with opening statements. At approximately 2:30 P.M., the plaintiff began presenting its case, that is, offering exhibits and reading portions of depositions. It rested at about 3:45 P.M. the following day, after offering some 260 exhibits with little or no explanation of the meaning or significance of such exhibits by counsel and without calling a single witness, brewer, maltster, or distributor, or any other witness, to assist the court or to interpret or explain the exhibits and portions of depositions offered in evidence. The defendant Pabst immediately filed a motion to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs with respect to that motion were filed, a hearing was held on April 30, 1964, and proposed findings and comments thereon were also filed prior to the court's opinion of September 22, 1964.

D. *Pabst and Blatz*

13. At the time of the acquisition of Blatz in 1958, and continuing to date, Pabst has owned and operated breweries located in Milwaukee, Wisconsin; Peoria, Illinois; Newark, New Jersey; and Los Angeles, California (Answer, paragraph 8). The Milwaukee brewery was the largest and had the greatest capacity (GX 108). Prior to the acquisition, Blatz Brewing Company produced beer at its single plant located in Milwaukee, Wisconsin (Answer, paragraph 9).

Early in 1959, the Blatz plant was placed in a shut-down status, but Blatz brand beer has since been brewed separately at the four Pabst plants (GX 109–110).

14. In every year from 1949 to 1961 beer brewed by Pabst has been sold in every state in the continental United States (JX 47–59). Beer brewed by Blatz in Milwaukee was sold in every state in 1949, 1950, 1951 and 1953, in not less than thirty-seven states in each year from 1954 to 1957, and in forty states in 1958 (JX 47–56). In 1959 and 1960 Blatz beer was sold in every state (JX 57–58) and in 1952 and 1961 Blatz was sold in every state except one (JX 50, 59).

15. Total sales of Pabst beer and Blatz beer in the United States in the years from 1949 to 1961 were as follows:

Year	Pabst	Blatz
1949	[1] $4,336,378	$1,545,622
1950	3,763,395	1,650,071
1951	3,901,571	1,665,281
1952	4,076,816	1,551,523
1953	3,925,757	989,288
1954	3,263,033	923,583
1955	3,129,452	907,836
1956	3,017,552	937,241
1957	2,548,452	1,239,334
1958	2,254,001	1,717,489
1959	2,060,775	2,133,546
1960	1,952,130	2,426,440
1961	2,067,346	2,524,716

[1] Unless otherwise stated, industry statistics are in barrels, the volume unit most commonly used in the brewing industry.

Source: JX 47–59.

16. The percentage of national taxpaid withdrawals represented by Pabst, by Blatz, and by Pabst and Blatz combined in the years from 1949 to 1961 as well as their respective ranking among brewers in the continental United States in the years from 1957 to 1961 were as follows:

Year	Pabst		Blatz		Combined	
	Percent	Rank	Percent	Rank	Percent	Rank
1949	5.14	----	1.83	----	6.97	----
1950	4.55	----	2.00	----	6.55	----
1951	4.67	----	1.99	----	6.66	----
1952	4.81	----	1.83	----	6.64	----
1953	4.57	----	1.15	----	5.72	----
1954	3.92	----	1.11	----	5.03	----
1955	3.69	----	1.07	----	4.75	----
1956	3.55	----	1.10	----	4.66	----
1957	3.02	10	1.47	18	4.49	----
1958	2.67	11	2.04	13	4.71	----
1959	2.35	13	2.44	11	4.79	6
1960	2.22	13	2.76	9	4.98	6
1961	3.00	10	2.83	11	5.83	3

Source: JX 6-11, JX 32, 35, 38, 41, 44, 47-59.

II. THE PLAINTIFF HAS NOT SATISFIED ITS BURDEN OF PROVING THAT WISCONSIN OR THE THREE-STATE AREA IS A RELEVANT GEOGRAPHIC MARKET

A. *Wisconsin*

17. Plaintiff failed to provide the court with the testimony of a single representative of the beer industry to explain how or why the state of Wisconsin constitutes a single area of effective competition although twelve Wisconsin brewers appeared on the plaintiff's list of seventy-one proposed witnesses. No testimony of any participant in the beer industry such as a brewer or distributor nor of any witness of any kind was offered which might have been useful to assist the court in determining whether there exists any area of effective competition in beer other than the agreed area, the continental United States.

18. Total taxpaid withdrawals (the output of breweries on which the federal excise tax of $9.00 per barrel is paid) and production (the total output of brew-

eries) of Wisconsin breweries, Wisconsin taxpaid withdrawals and production as a percentage of national taxpaid withdrawals and production, and Wisconsin's rank among states in taxpaid withdrawals and production from 1933 to 1961 were as follows:

	Wisconsin taxpaid withdrawals			Wisconsin production		
Year	Barrels	Percent	Rank	Barrels	Percent	Rank
1933	3,039,819	14.90	2	(1)	(1)	(1)
1934	4,608,201	11.62	3	(1)	(1)	(1)
1935	4,867,456	10.85	3	5,207,777	10.91	3
1936	5,816,778	11.00	3	6,112,458	10.92	3
1937	6,053,157	10.90	3	6,338,141	10.92	3
1938	5,570,487	10.86	3	5,764,000	10.79	3
1939	5,578,603	10.60	3	5,813,166	10.56	3
1940	5,280,492	10.24	3	5,493,999	10.25	3
1941	5,975,442	10.54	3	6,345,674	10.56	3
1942	7,214,582	11.28	2	7,741,710	11.45	2
1943	8,143,833	11.31	2	8,584,909	11.46	2
1944	8,366,988	10.38	3	9,420,922	11.04	2
1945	8,423,249	10.38	3	9,445,668	10.80	3
1946	8,372,237	10.62	3	8,905,076	10.78	2
1947	10,453,449	12.02	2	11,204,452	12.25	2
1948	10,528,409	12.43	2	11,144,944	12.70	2
1949	11,448,463	13.57	1	12,281,394	13.90	1
1950	12,009,271	14.52	1	13,085,174	14.86	1
1951	12,824,119	15.33	1	14,076,966	15.73	1
1952	13,606,635	16.06	1	15,075,934	16.69	1
1953	10,749,014	12.51	2	11,567,224	12.57	2
1954	10,482,752	12.60	2	11,074,157	12.46	2
1955	10,727,842	12.63	2	11,498,019	12.75	2
1956	11,128,076	13.10	1	11,938,007	13.23	1
1957	11,014,566	13.07	2	11,735,362	13.13	2
1958	11,034,403	13.08	1	11,868,224	13.18	1
1959	10,119,075	11.56	2	10,737,424	11.54	2
1960	10,056,894	11.45	2	10,589,589	11.34	2
1961	10,383,561	11.67	2	11,198,894	11.78	2

[1] Not available.

19. Wisconsin has ranked eighth, ninth or tenth among the states in the consumption of beer in each year from 1934 to 1961. Wisconsin's consumption in barrels, Wisconsin's consumption as a percent of national consumption, and Wisconsin's rank among states in consumption from 1934 to 1961 were as follows:

Year	Barrels	Percent	Rank
1934	1,702,787	4.75	8
1935	1,906,544	4.60	8
1936	2,193,411	4.49	8
1937	2,295,973	4.40	8
1938	2,142,481	4.25	8
1939	2,174,457	4.16	8
1940	2,114,727	4.13	8
1941	2,201,172	3.86	8
1942	2,196,510	3.49	10
1943	2,425,135	3.45	9
1944	2,584,884	3.38	9
1945	2,710,444	3.40	9
1946	2,805,819	3.49	9
1947	3,039,738	3.59	10
1948	3,097,385	3.68	9
1949	3,031,060	3.66	9
1950	3,043,925	3.69	9
1951	2,945,593	3.55	9
1952	3,039,323	3.60	9
1953	3,076,497	3.61	9
1954	3,014,067	3.65	9
1955	3,099,655	3.68	9
1956	3,094,919	3.65	9
1957	3,066,673	3.66	9
1958	3,112,955	3.72	9
1959	3,198,468	3.68	9
1960	3,267,348	3.75	9
1961	3,303,154	3.73	9

Source: JX 12-21.

20. In 1939 beer was legally sold and consumed in each state in the United States for the first time since before prohibition; in each year thereafter through 1961 beer was in fact sold in every state (JX 13–21). Since 1952 no single state has consumed more than 12.83% of total national consumption (JX 18–21) or accounted for more than 16.06% of national taxpaid withdrawals (JX 7–11). The foregoing tables reveal that from 1935 to 1961 the production of beer in Wisconsin far exceeded Wisconsin consumption of beer in that state. It is obvious, therefore, that the great bulk of Wisconsin's production of beer was consumed outside that state.

21. In the years from 1955 to 1961 the Wisconsin consumer did not limit himself to Wisconsin brewed

beer, but drank freely of beers brewed by out-of-state brewers (JX 60–78, GX 257).

22. The number of brewing companies selling beer in Wisconsin and the number of breweries operated in Wisconsin in each year from 1955 to 1961 were as follows:

Year	Number of companies selling beer in Wisconsin	Number of breweries operated in Wisconsin
1955	77	43
1956	74	43
1957	69	38
1958	[1] 69	38
1959	60	38
1960	56	33
1961	54	33

[1] Pabst and Blatz treated as separate companies.

Source: JX 60-78, GX 213.

The 54 companies selling in Wisconsin in 1961 owned 132 brands (GX 257).

23. The percentage of total Wisconsin sales and the ranking of Pabst, Blatz, and Pabst and Blatz combined among all companies selling beer in Wisconsin from 1955 to 1961 were as follows:

Year	Pabst		Blatz		Pabst-Blatz	
	Rank	Percent of Wisconsin sales	Rank	Percent of Wisconsin sales	Rank	Percent of Wisconsin sales
1955	3	10.51	1	14.01	----	----
1956	4	10.86	1	12.72	----	----
1957	4	11.14	1	12.81	----	----
1958	4	10.73	1	12.99	----	----
1959	----	----	----	----	1	24.80
1960	----	----	----	----	1	26.14
1961	----	----	----	----	1	27.41

Source: JX 60-78.

24. National and Wisconsin sales of Pabst beer and Blatz beer in the years from 1949 to 1961 were as follows:

Year	Pabst		Blatz	
	National	Wisconsin	National	Wisconsin
1949	4, 338, 373	2302, 536	$1, 943, 022	$460, 626
1950	3, 763, 306	295, 203	1, 680, 071	374, 302
1951	3, 601, 571	271, 602	1, 665, 261	367, 726
1952	4, 070, 816	301, 914	1, 551, 523	337, 399
1953	3, 936, 737	283, 347	999, 203	430, 263
1954	3, 263, 052	304, 039	923, 203	427, 609
1955	3, 139, 452	324, 396	937, 526	432, 310
1956	3, 017, 352	333, 339	937, 341	399, 410
1957	2, 848, 452	340, 379	1, 339, 334	395, 678
1958	2, 284, 001	333, 344	1, 717, 469	403, 427
1959	2, 080, 775	374, 704	2, 133, 346	414, 322
1960	1, 952, 130	429, 402	2, 426, 440	424, 327
1961	2, 067, 346	473, 490	2, 324, 716	429, 772

Source: JX 47-59.

25. More Pabst brand beer was sold in California, Illinois and New York than was sold in Wisconsin in 1949 (JX 47); more Pabst brand beer was sold in California and in Illinois than was sold in Wisconsin in each of the years 1950 to 1957 (JX 48–55); more Pabst brand beer was sold in California than in Wisconsin in 1958, 1959 and 1961 (JX 56–59). Wisconsin was the largest state market for Pabst in 1960 (JX 58). From 1949 to 1957 more Blatz beer was sold in Wisconsin than any other state; in each year from 1958 to 1961 Michigan ranked first in sales of Blatz beer and Wisconsin ranked second (JX 47–59).

26. The percentage of national Pabst and Blatz sales which were made in Wisconsin in the years 1957–1961 is shown on the following table:

Year	Percent total Pabst sales which were made in Wisconsin	Percent total Blatz sales which were made in Wisconsin
1957	13.36	31.36
1958	14.76	23.49
1959	18.19	19.51
1960	22.00	17.49
1961	17.83	17.02

Source: JX 55-59.

27. In the years from 1955 through 1960 the following amounts were spent for advertising Pabst brand beer in the United States and in Wisconsin. The percentage of these total advertising expenditures made in Wisconsin and the percentage of national Pabst sales made in Wisconsin are also shown below:

Dollars Spent Advertising Pabst

Year	United States	Wisconsin	Percent of dollars spent in Wisconsin	Wisconsin percent of total national Pabst sales
1955	$7,361,270	$436,427	6.01	10.37
1956	8,430,316	537,722	6.00	11.05
1957	8,640,557	797,604	9.11	13.26
1958	6,209,602	558,751	8.65	14.78
1959	5,602,752	647,468	11.76	18.19
1960	5,726,267	779,472	13.61	22.00

Source: JX 43-48, GX 129-134.

28. In the years 1959 and 1960 the following amounts were spent for advertising Blatz brand beer in the United States and Wisconsin. The percentage of these total national advertising expenditures made in Wisconsin and the percentage of national Blatz sales made in Wisconsin are also shown below:

Dollars Spent Advertising Blatz

Year	United States	Wisconsin	Percent of dollars spent in Wisconsin	Wisconsin percent of national Blatz sales
1959	$4,153,697	$286,517	23.26	19.51
1960	5,113,205	1,001,020	19.58	17.49

Source: JX 47-48, GX 129-130.

29. There is no evidence in the record concerning the price of any type of package of Pabst or Blatz beer except the price for 24/12-oz. returnable bottles, f.o.b. brewery; neither is there any record evidence concerning the price of draft beer. The record also

lacks any evidence concerning the relative sales volume of 24/12-oz. returnable bottles and the various other packages of beer. After the acquisition the price charged distributors in Wisconsin for Blatz brand beer on packages of 24/12-oz. returnable bottles, f.o.b. brewery, was generally higher than that charged elsewhere (GX 124, 256, Tr. 106–107).

30. There is no evidence in the record that competition in the beer industry is in any manner localized (as, for example, by the factor of inconvenience) or affected by the location of a brewery or that the place of production in any manner affects sales or the extent of the market area.

31. From 1935 through 1961 the production of beer in Wisconsin far exceeded Wisconsin consumption of beer. During the years from 1957 through 1961 the number of barrels produced and consumed in Wisconsin were:

Year	Barrels produced	Barrels consumed
1957	11 735, 382	3, 066, 673
1958	11, 868, 224	3, 112, 955
1959	10, 737, 424	3, 198, 468
1960	10, 589. 589	3, 267, 348
1961	11, 198, 804	3, 303, 154

Source: JX 19-21, 29-31.

Since the Wisconsin consumer drank freely of beers brewed by out-of-state brewers, it is obvious that the great bulk of Wisconsin's production of beer was consumed outside of Wisconsin.

32. In 1958, the year of the merger, seventeen states produced no beer; nineteen others consumed more beer than they produced; in thirteen states taxpaid withdrawals exceeded consumption. The total consumption and total taxpaid withdrawals for each state in 1958 are shown on the following table:

1958

State	Consumption	Taxpaid withdrawals
Alabama	$502,512	----------
Arizona	594,270	$195,847
Arkansas	340,443	----------
California	7,002,755	6,535,083
Colorado	716,241	1,574,774
Connecticut	1,271,985	104,395
Delaware	223,003	----------
District of Columbia	475,646	----------
Florida	1,930,244	427,149
Georgia	596,663	144,537
Idaho	264,440	31,431
Illinois	5,804,309	3,043,349
Indiana	2,126,714	2,362,627
Iowa	1,237,372	54,864
Kansas	610,725	----------
Kentucky	1,073,017	1,892,895
Louisiana	1,277,324	2,243,111
Maine	423,617	----------
Maryland	1,892,262	2,116,041
Massachusetts	2,604,392	1,132,043
Michigan	5,060,694	3,914,576
Minnesota	1,730,142	3,744,515
Mississippi	310,886	----------
Missouri	2,193,944	6,885,174
Montana	412,293	254,807
Nebraska	720,265	1,011,453
Nevada	190,850	----------
New Hampshire	338,502	----------
New Jersey	3,691,77	7,314,520
New Mexico	346,095	----------
New York	10,208,451	10,731,12
North Carolina	663,508	----------
North Dakota	284,036	----------
Ohio	5,197,029	4,382,124
Oklahoma	613,115	31,959
Oregon	771,519	186,554
Pennsylvania	7,121,529	6,714,450
Rhode Island	582,965	888,147
South Carolina	390,318	----------
South Dakota	233,623	----------
Tennessee	752,763	----------
Texas	4,166,218	2,484,542
Utah	225,833	140,46
Vermont	183,554	----------
Virginia	1,276,807	183,068
Washington	1,361,388	2,631,047
West Virginia	571,501	45,581
Wisconsin	3,112,965	11,034,403
Wyoming	[1]84,115	----------
Total	93,765,828	84,356,660

Source: JX 9, 20.

33. There is no evidence that Pabst or Blatz competed or were likely to compete at the retail level through controlled outlets in any area prior to the acquisition. Rather, it appears that their sales of beer were made primarily through distributors or wholesalers (Tr. 90). There is no evidence concerning the brewers' relationship with the distributors or wholesalers. Neither is there any evidence with respect to the relations between retail beer outlets and either distributors or brewers.

34. There is no evidence concerning extraordinarily rapid population growth, large and growing cities, increasing industrial activities or growth factors which establish that Wisconsin is an unique market for beer or is to be treated differently from any other area in which beer is sold.

35. Prior to the acquisition of Blatz by Pabst in July, 1958, Pabst brand and Blatz brand beer were advertised and sold in competition with each other (JX 47–56; GX 133–134, Tr. 190) and all other brands of beer throughout the United States (Answer, paragraph 12; JX 32–37).

36. While statutes and regulations with respect to the beer industry have been enacted by every state (GX 255–256), these statutes and regulations are common to all breweries and do not make it impossible to sell beer within different states (GX 256). The fact that beer is sold throughout the United States (JX 32–100) reveals that the laws of the various states do not deter interstate competition among brewers. Every state permits the shipment of beer into that state by out-of-state brewers (GX 256). None of the regulations prevent a brewer from (1) using ingredients of his own choice in his product, (2) brewing beer by a formula of his own selection,

(3) advertising the product to the consumers, (4) selling the product for resale to beer distributors, or (5) selling wherever the brewer elects to sell. For example, between 1957 and 1961 every brewery located in Indiana had sales in Michigan (JX 81–85, GX 257) and Illinois (JX 86–90, GX 257). Not a single regulation from among all those referred to in the evidence relates solely to Wisconsin. The statutes and regulations do not vary appreciably from state to state. Thus, every state permits consumer advertising; thirty-eight states have no regulations with respect to credit between the brewer and distributor; every State permits the sale of beer in 12-ounce containers, only one prevents the use of 32-ounce containers, and only four prohibit the use of 7-ounce containers; every state permits the sale of beer with an alcoholic content of over 3.2% by weight though nine states limit the alcoholic content to this amount in certain circumstances; and some of the statutes and regulations such as those regulating trading stamps and coupons referred to in GX 140–156 also affect companies in other industries.

37. Wisconsin has a high per capita consumption of beer (GX 264) computed by dividing total Wisconsin beer consumption by total Wisconsin population, but such statistics are of little value since beer cannot be sold to the population as a whole but only to adults and are of no aid in defining a market area.

38. There is no evidence in the record that any small brewery located in Wisconsin is locally owned.

39. Plaintiff has not introduced sufficient evidence to prove that the state of Wisconsin is a relevant market area which corresponds to the commercial realities of the beer industry.

B. *The Three-State Area*

40. Plaintiff failed to provide the court with the testimony of a single representative of the beer industry or any other type of qualified witness to explain how or why the states of Wisconsin, Illinois and Michigan constitute a single area of effective competition. There is no evidence in the record to suggest that competition among brewers is so localized that the area of effective competition involving beer is this narrowly confined.

41. Plaintiff's arguments with respect to the three-state area were limited to only the year 1957 (Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss dated February 24, 1964). In that year the evidence shows that 14,230,609 barrels of beer were sold in this area (JX 91–92); Pabst sales in the area were 779,234 barrels, or 5.48% of total area sales (JX 91); Blatz sales in the area were 831,527 barrels, or 5.84% of total area sales (JX 91); Blatz ranked sixth and Pabst ranked seventh in total sales among the 104 different companies which sold beer in that year in the three-state area (JX 91–92). Pabst sales in this area were 30.49% of its total national sales and Blatz sales were 66.73% of its total national sales (JX 55). More than half (58%) of combined sales of Pabst and Blatz were made outside that area in 1957 (JX 55) and if combined the two companies would have ranked second with 11.32% of the market in these three states (JX 91). No evidence for any other year nor of any other type has been referred to by plaintiff in its written or oral arguments. Such evidence not only fails to prove that the three states constitute a separate relevant geographic market, but also is of ques-

tionable relevancy in even determining the question since it is more closely related to the issue of competitive effects.

42. There is no evidence in the record which demonstrates that under the commercial realities of the beer industry the three states of Wisconsin, Illinois and Michigan form a relevant market area.

III. THE PLAINTIFF HAS NOT SATISFIED ITS BURDEN OF PROVING THAT THE EFFECT OF THE ACQUISITION OF BLATZ BY PABST MAY BE SUBSTANTIALLY TO LESSEN COMPETITION OR TO TEND TO CREATE A MONOPOLY IN THE BEER INDUSTRY IN THE CONTINENTAL UNITED STATES, THE ONLY RELEVANT GEOGRAPHIC MARKET

A. *Market Shares and Trend Toward Concentration*

43. Plaintiff has failed to call as a witness a single representative of the beer industry or any other qualified person to testify as to the probable effect of the acquisition of Blatz by Pabst upon the production, distribution, and sale of beer in the United States. No evidence, other than statistics, was offered by plaintiff as to the "structure, history and probable future" of the beer industry. *Brown Shoe Company* v. *United States*, 370 U.S. 294, 322 (1962).

44. The production of beer in the United States on a commercial scale was reinstituted on April 7, 1933 following enactment of the Cullen-Harrison Act ending a fourteen year era of nationwide prohibition (Answer, paragraph 7). In the calendar year 1935, beer production amounted to 47,735,901 barrels (JX 22); taxpaid withdrawals were 44,867,639 barrels (JX 1); and consumption was 41,476,658 barrels (JX 12). These figures increased appreciably by 1939; by 1947

the 1935 consumption figures were doubled; these 1947 levels were not again reached until 1959; since 1958 there have been annual increases in these figures; all of which is shown by the following table:

Year	Production	Taxpaid withdrawals	Consumption
1933	(1)	20,400,295	(1)
1934	(1)	39,654,720	35,862,145
1935	47,735,901	44,867,639	41,476,658
1936	55,995,770	52,888,374	48,928,871
1937	58,037,759	55,539,608	52,193,605
1938	53,417,250	51,272,416	50,385,365
1939	55,041,506	52,647,505	52,308,044
1940	53,592,917	51,555,845	51,244,274
1941	59,914,907	56,698,728	56,971,239
1942	67,632,964	63,958,243	62,967,617
1943	74,921,734	72,008,677	70,367,841
1944	83,349,858	79,105,722	78,490,083
1945	87,467,024	81,144,514	79,753,605
1946	82,583,953	78,800,741	80,385,654
1947	91,489,645	86,936,712	85,194,329
1948	87,722,911	84,674,868	84,060,779
1949	88,373,356	84,351,931	82,845,503
1950	88,071,702	82,705,004	82,536,196
1951	89,512,210	83,630,785	83,085,112
1952	90,383,397	84,733,856	84,443,077
1953	92,029,707	85,945,471	85,237,866
1954	88,852,470	83,214,536	82,475,465
1955	90,213,599	84,907,946	84,257,184
1956	90,265,394	84,944,741	84,771,105
1957	89,382,923	84,288,880	83,779,609
1958	90,043,417	84,356,660	83,765,828
1959	93,068,154	87,558,974	86,875,846
1960	93,354,041	87,856,534	87,184,444
1961	94,972,948	88,976,417	88,485,795

[1] Not available

Source: JX 1-31.

45. All brewing firms selling more than 1% of sales in the United States in any year from 1957 to 1961, their sales, percentage share of national market and rank are shown below:

1957

Brewery	Barrels	Percent	Rank
Anheuser-Busch	6,115,000	7.25	1
Schlitz	6,023,000	7.15	2
Falstaff	4,300,000	5.10	3
Ballantine	3,981,000	4.72	4
Hamm	3,376,000	4.01	5
Carling	3,150,000	3.74	6
Liebmann	2,966,000	3.52	7
Schaefer	2,940,000	3.49	8
Stroh	2,583,000	3.06	9
Pabst	2,548,452	3.02	10
Miller	2,322,000	2.75	11
Lucky Lager	1,966,000	2.33	12
Schmidt	1,757,000	2.08	13
Ruppert	1,540,000	1.83	14
Piel	1,435,000	1.70	15
Drewry	1,371,000	1.63	16
National	1,301,000	1.54	17
Blatz	1,239,334	1.47	18
Coors	1,146,000	1.36	19
Jackson	1,107,000	1.31	20
Olympia	1,100,000	1.31	21
Duquesne	1,061,000	1.26	22
San Francisco	974,000	1.16	23
Pearl	943,000	1.12	24
Pfeiffer	911,411	1.08	25
Narragansett	881,000	1.05	26
International	843,554	1.00	27

1958

Brewery	Barrels	Percent	Rank
Anheuser-Busch	6,982,022	8.28	1
Schlitz	5,875,000	6.96	2
Falstaff	4,550,000	5.39	3
Ballantine	4,035,529	4.78	4
Carling	3,531,182	4.19	5
Hamm	3,394,206	4.02	6
Schaefer	2,970,000	3.52	7
Liebmann	2,850,000	3.38	8
Lucky Lager	2,361,540	2.80	9
Miller	2,312,701	2.74	10
Pabst	2,254,001	2.67	11
Stroh	1,922,872	2.28	12
Blatz	1,717,489	2.04	13
Schmidt	1,660,909	1.97	14
Drewry	1,527,304	1.81	15
Ruppert	1,450,000	1.72	16
Piel	1,420,000	1.68	17
Coors	1,406,000	1.67	18
National	1,294,000	1.53	19
Olympia	1,249,200	1.48	20
Duquesne	1,035,000	1.23	21
Jackson	1,030,351	12.2	22
Pearl	981,339	11.6	23
Burgermeister	965,500	1.14	24
Narragansett	888,000	1.05	25
Pfeiffer	844,623	1.00	26

1959

Brewery	Barrels	Percent	Rank
Anheuser-Busch	8,027,000	9.17	1
Schlitz	5,860,000	6.69	2
Falstaff	4,868,000	5.56	3
Carling	4,307,000	4.92	4
Ballantine	4,225,000	4.83	5
Pabst-Blatz [1]	4,194,321	4.79	6
Hamm	3,670,000	4.19	7
Schaefer	3,026,000	3.46	8
Liebmann	2,785,000	3.18	9
Miller	2,379,000	2.72	10
Lucky Lager	2 243,000	2.56	11
Stroh	2,112,000	2.41	12
Schmidt	1,744,000	1.99	13
Coors	1,647,840	1.88	14
Drewry	1,625,750	1.86	15
Ruppert	1,490,000	1.70	16
Piel	1,460,000	1.67	17
National	1,342,000	1.53	18
Olympia	1,335,000	1.52	19
Duquesne	1,097.000	1.25	20
Jackson	1,025,000	1.17	21
Burgermeister	999,000	1.14	22
Pearl	979,000	1.12	23
Narragansett	939,000	1.07	24
International	927,000	1.06	25
Pfeiffer	899,826	1.03	26

1960

Brewery	Barrels	Percent	Rank
Anheuser-Busch	8,480,000	9.65	1
Schlitz	5,640,000	6.42	2
Falstaff	4,910,000	5.59	3
Carling	4,790,000	5.45	4
Ballantine	4,383,000	4.99	5
Pabst-Blatz [1]	4.378,570	4.98	6
Hamm	3,907,040	4.45	7
Schaefer	3,101,000	3.53	8
Liebmann	2,690,000	3.06	9
Miller	2,314,000	2.63	10
Lucky Lager	2.168,000	2.47	11
Stroh	2,102.000	2.39	12
Coors	1,907,000	2.17	13
Schmidt	1,811,000	2.06	14
Drewry	1.638,800	1.87	15
Olympia	1,496,895	1.70	16
Piel	1,486,000	1.69	17
National	1,355,000	1.54	18
Ruppert	1,305,000	1.49	19
Duquesne	1,067,000	1.21	20
Pearl	1,026,000	1.17	21
Jackson	1,012,000	1.15	22
Narragansett	941,000	1.07	23
Burgermeister	931,000	1.06	24
International	918,000	1.04	25
Pfeiffer	917,894	1.04	26
Lone Star	895,111	1.02	27

See footnotes at end of table.

1961

Brewery	Barrels	Percent	Rank
Anheuser-Busch	8,800,000	9.55	1
Schlitz	5,775,688	6.49	2
Pabst-Blatz [3]	5,192,662	5.83	3
Falstaff	5,120,000	5.75	4
Carling	5,047,328	5.67	5
Ballantine	4,510,000	5.06	6
Hamm	3,714,144	4.17	7
Schaefer	3,286,550	3.69	8
Liebmann	2,987,146	3.35	9
Miller	2,708,804	3.04	10
Coors	2,303,000	2.59	11
Lucky Lager	2,238,000	2.51	12
Stroh	2,029,300	2.28	13
Schmidt	1,854,842	2.08	14
Olympia	1,558,000	1.75	15
Drewry	1,457,812	1.64	16
Pearl	1,429,068	1.60	17
National	1,375,000	1.54	18
Piel	1,360,000	1.53	19
Ruppert	1,200,000	1.35	20
Narragansett	1,094,000	1.23	21
Duquesne	1,007,201	1.13	22
Jackson	964,100	1.08	23
Pfeifer	930,073	1.04	24
Lone Star	901,505	1.01	25

[1] Pabst sales were 2,060,775 barrels in 1960 and Blatz sales were 2,135,546 barrels. Blatz would have ranked 11th with 2.44% and Pabst 13th with 2.35%.

[2] Pabst sales were 1,952,130 barrels in 1960 and Blatz sales were 2,426,440 barrels. Blatz would have ranked 9th with 2.76% and Pabst 13th with 2.22%.

[3] Pabst sales were 2,667,346 barrels in 1961 and Blatz sales were 2,524,716 barrels. Pabst would have ranked 10th with 3.00% and Blatz 11th with 2.88%.

Source: JX 33-46.

46. The combined market share of Pabst and Blatz brands for the years 1957 to 1960 was less than the 5.14% share of Pabst alone in 1949 (JX 6, JX 47) and the combined market share for Pabst and Blatz in 1961 was but 5.83% (JX 44). The combined market share of Pabst and Blatz is not of sufficient significance to infer a probability of a substantial lessening of competition or tendency to monopoly and thus shift to Pabst the burden of proving the absence of anticompetitive effects as in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 363 (1963). The market share figures of Pabst and Blatz are not of such size that Pabst and Blatz can be characterized

as major competitive factors comparable to the consolidating banks in *United States* v. *First National Bank & Trust Co. of Lexington*, 376 U.S. 665 (1964).

47. The number of brewing companies selling beer in the United States and those selling over 5%, 4% and 1% of national taxpaid withdrawals in the years from 1957 to 1961 were as follows:

Year	Total selling	Number selling over 5 percent	Number selling over 4 percent	Number selling over 1 percent
1957	208	3	5	27
1958	191	3	6	26
1959	177	3	7	26
1960	171	4	7	27
1961	162	6	7	24

Source: JX 33-46.

48. The number of brewery premises operated in the United States in various years since 1933 is shown on the following table:

Year	Number	Year	Number
1934	714	1957	284
1935	750	1958	252
1939	653	1959	244
1943	468	1960	229
1949	440	1961	229

Source: GX 212, 213.

In its complaint (Paragraph 7) plaintiff alleged that the decrease in the number of breweries was due to "merger, consolidation, and natural attrition," but no evidence of any kind was offered by the plaintiff as to any reason for the decrease in number of breweries or as to whether the decrease was accounted for by mergers or acquisitions or as to why any brewery may have ceased operations. There is no evidence in the record of any merger or acquisition in the beer industry other than the acquistion of Blatz by Pabst.

49. The percentage of national sales represented by

the leading members of the brewing industry in the years from 1957 to 1961 was as follows:

Year	Industry leader	Top 2 firms	Top 3 firms	Top 4 firms	Top 10 firms	Top 25 firms
1957	7.25	14.40	19.30	24.22	45.08	68.99
1958	8.28	15.24	20.63	25.41	46.08	70.71
1959	9.17	15.98	21.42	26.34	49.81	73.44
1960	9.65	16.07	21.66	27.11	50.75	74.53
1961	9.83	16.04	21.87	27.62	52.60	76.90

Source: JX 35-66.

In 1948 the ten and twenty-five leading breweries in the United States accounted for 32.68% and 49.2%, respectively, of national taxpaid withdrawals (GX 210, 211). No evidence was introduced to explain the relevancy or significance as measures of concentration of figures introduced by the plaintiff concerning the shares of industry sales in the United States which were made by the top ten or the top twenty-five brewers.

B. *Vertical Effects of the Acquisition on Maltsters*

50. Plaintiff failed to provide the court with the testimony of a single representative of the malt industry or any other qualified witness to explain how the acquisition of Blatz by Pabst would affect competition in any alleged relevant market, or what effect the acquisition might have on competition in malt. Plaintiff failed to introduce into evidence any of the eight affidavits in its possession showing the production and sale of malt by eight independent malting companies even though the authenticity or genuineness of these affidavits was stipulated to by the parties in the form of an agreed order (Order entered May 29, 1962).

51. Nothing in the record tends to prove the plaintiff's allegations that Pabst's malt capacity prior to the acquisition exceeded its own needs, or that since

the acquisition Blatz brand beer has contained only Pabst produced malt. Neither is there any proof that the acquistion harmed independent breweries by depriving them of a potential source of supply for malt from Pabst's malt producing facilities.

52. Plaintiff offered no evidence of total malt industry sales in any year, total malt sales to the brewing industry in any year or of malt sales to any person, firm or corporation other than Pabst and Blatz. Nor was evidence offered of the total amount of sales by maltsters who sold to Pabst or Blatz or the reasons for any changes, if any, in malt purchases by Pabst after the acquisition of Blatz. Further, there was no evidence defining the malt industry or the nature of competition therein or which reveals that there is benefit to a brewer in being integrated as to its supply of malt even if integration be shown. There is no evidence that Blatz sold malt to third parties or purchased beer from third parties prior to its acquisition by Pabst.

53. Purchases of malt by Pabst increased from $515,066 in 1957 to $1,768,779 in 1959 (GX 116), an increase of about $1,250,000. Pabst malt purchases in 1958 were $2,277,945 (GX 116). Blatz malt purchases were $2,105,845 in 1957 and $1,609,037 in 1958 (GX 117). Seven companies sold malt to Blatz in 1957 and eight in 1958 (GX 117). Blatz did not make more than 25% of the dollar value of its malt purchases from any one company in either 1957 or 1958 (GX 117). In 1959 Pabst bought malt from eleven different malting companies (GX 116) for use at each of its four plants where Blatz as well as Pabst brand was being produced (GX 110, 116). Brewing ceased at the Blatz brewery prior to February 20, 1959 (GX 109).

C. *Vertical Effects of the Acquisition on Distributors*

54. Plaintiff did not call a single beer distributor witness to aid the court in determining what effect, if any, the acquisition of Blatz by Pabst has had, or in reasonable probability will have, upon the sale or distribution of beer in any alleged relevant market. The evidence offered concerning distributors related only to nine out of 600 to 900 Pabst brand distributors (Tr. 95–96) and an unknown number of Blatz distributors. These nine distributors were located in the cities of Chicago, Illinois; Battle Creek, Bay City, and Lansing, Michigan; and Durham, Fayetteville, and Wilmington, North Carolina (GX 137, 157–185).

55. The record contains no evidence concerning the nature and function of distributorships in general—their relationship to breweries they represent, their contract rights, if any, their dependence or lack of dependence upon a particular brand, the nature of competition, if any, among them, the number of distributorships and the number of Pabst and/or Blatz distributorships in existence, etc., except as stated in Findings 54 to 57.

56. Approximately 80% of Pabst beer was sold through distributors prior to the acquisition (Tr. 90). Between 75% and 80% of Blatz beer was sold through distributors both before and after the acquisition (Tr. 90). The vast majority of distributors handle more than one brand of beer (Tr. 100). There are many alternate sources of supply for beer distributors, for example, in 1961 there were at least 162 brewing companies selling over 400 brands of beer (JX 44, GX 257).

57. Pabst did not have a policy of consolidating distributors in a single location; the company policy was to save brands, if possible, in the location where they

were established at the time of the merger and of consolidating brands, if necessary, to save a distributor or obtain new representation where previously the brand had not been represented (Tr. 96–99, 190–195, GX 267).

D. *Summary*

58. Plaintiff's evidence has consisted of documentary, primarily statistical, evidence and, to a very minor extent, excerpts from depositions. Plaintiff has failed to present any evidence, other than statistics, concerning the structure, history and probable future of the market. It has offered no testimony from either economists or experts in the beer industry in support of its position as to the relevant geographic market. It has failed to produce a single brewer, maltster, or distributor, or any person knowledgeable in this industry, in support of its position that the effect of Pabst's acquisition of Blatz may be that proscribed by Section 7.

59. Plaintiff's evidence of market shares, trend toward concentration, and vertical effects of the acquisition on distributors and maltsters does not provide the basis for concluding that the acquisition of Blatz by Pabst has had, or in all reasonable probability will have, the effect of substantially lessening competition or tending to create a monopoly in the beer industry in the United States. In sum, plaintiff has failed to sustain its burden of proving that Section 7 of the Clayton Act, 15 U.S.C. § 18, has been violated.

Conclusions of Law

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25.

2. The only line of commerce for purposes of this case is the beer industry, i.e., the production, distribution and sale of beer.

3. The continental United States is the relevant section of the country in which the competitive effect of this acquisition must be judged.

4. Plaintiff has failed to meet its burden of proving that either Wisconsin or the combination of the three states of Wisconsin, Illinois and Michigan is a relevant section of the country within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. Plaintiff has failed to meet its burden of proving that in the continental United States the effect of the acquisition of the assets of the Blatz Brewing Company by Pabst Brewing Company may be substantially to lessen competition or to tend to create a monopoly in beer.

6. The motion of the defendant, Pabst Brewing Company, for dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure must therefore be granted.

* * * * *

Respectfully submitted,

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Of Counsel

Dated: October 9, 1964.
Approved as to form:
(S) BERTRAM M. LONG,
Attorney, Department of Justice.

Dated, Milwaukee, Wisconsin, this 13th day of October, 1964.

(S) ROBERT E. TEHAN,
U.S. District Judge.

APPENDIX C

United States District Court, Eastern District of Wisconsin

Civil Action No. 59 C 215

(Filed October 13, 1964)

UNITED STATES OF AMERICA, PLAINTIFF

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION, DEFENDANTS

FINAL JUDGMENT OF DISMISSAL

Plaintiff, the United States of America, having duly presented all its evidence in support of its complaint and having duly rested on January 28, 1964, the defendant, Pabst Brewing Company, having filed a motion for judgment of dismissal pursuant to the provisions of Rule 41(b) of the Federal Rules of Civil Procedure on the ground that, upon the facts and the law, plaintiff has shown no right to relief; briefs in opposition to and in support of the motion having been filed, and a hearing on said motion having been held, and the Court having considered the pleadings, all of the evidence in the record, the briefs, and the arguments of defendant Pabst Brewing Company and plaintiff, and being fully informed, and having on September 22, 1964 filed its Opinion with respect to said motion, and having on the date hereof filed its Findings of Fact and Conclusions of Law,

Now Therefore, it is Ordered, Adjudged, and Decreed in accordance with the aforesaid Opinion, Findings of Fact and Conclusions of Law:

1. That the motion of defendant Pabst Brewing Company for judgment of dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure is hereby granted.

2. That the complaint filed herein by the plaintiff, the United States of America, against Pabst Brewing Company, Schenley Industries, Inc. and The Val Corporation is hereby dismissed with prejudice.

Dated, Milwaukee, Wisconsin this 13 day of October 1964.

Enter:

(S) ROBERT E. TEHAN,
United States District Judge.

Approved as to form:

(S) BERTRAM M. LONG,
Attorney for Plaintiff.

(S) JOHN T. CHADWELL,
Attorney for Defendant,
Pabst Brewing Company.

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JOHN F. DAVIS, CLE

No. 404

In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA,

Appellant,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION,

On Appeal from the United States District Court for the Eastern District of Wisconsin

MOTION OF PABST BREWING COMPANY TO AFFIRM

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MOTION OF PABST BREWING COMPANY TO AFFIRM

Pabst Brewing Company[1] pursuant to Rule 16 of the

[1] Throughout this brief Pabst Brewing Company is referred to as "Pabst"; Blatz Brewing Company, the assets and business of which Pabst acquired from Schenley Industries, Inc., is referred to as "Blatz." The Jurisdictional Statement is cited as "J.S."; the Opinion of the trial court, Appendix A of the Jurisdictional Statement, is cited as "Op. . . . " The Findings of Fact and Conclusions of Law, Appendix B of the Jurisdictional Statement, are cited by the specific finding or conclusion number "F. . . . " or "C. . . . "

Revised Rules of this Court moves that the judgment of the district court be affirmed on the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

STATEMENT

This is a direct appeal from a final judgment of the district court sustaining Pabst's motion to dismiss, filed at the close of the plaintiff's case pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, on the grounds that the plaintiff failed to meet its burden of proving a violation of Section 7 of the Clayton Act (C. 4, 5, 6; J.S. 73a). The Pabst acquisition of the assets and business of Blatz was made in July, 1958 after Pabst sales had declined almost 50% during the preceding six years (F. 15, J.S. 51a). The complaint charged that the acquisition may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of beer in the United States, in the area comprising the three states of Wisconsin, Illinois and Michigan, and in the state of Wisconsin alone (Op., J.S. 1a; F. 4, J.S. 46a). At the time of the acquisition, Pabst ranked 11th in the sale of beer by breweries in the United States, accounting for approximately 2.67% of national beer sales, while Blatz ranked 13th and accounted for 2.04% (F. 16, J.S. 51a-52a).

Prior to trial, counsel for the government told the court that its representatives had interviewed 404 brewers, distributors and maltsters, and trial subpoenas were issued for 39 brewers, 24 distributors and 8 maltsters (F. 8, J.S. 48a).[2] Two court days before the trial, however, the gov-

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[2] Counsel told the court that "the government will call brewer witnesses to testify about the actual competitive situation in the beer industry. This is an invaluable and time honored mode of evidence in antitrust cases where the effect on competition is an issue. See for instance, *United States* v. *Philadelphia National Bank et al., supra*, at pages 367-369" (Op., J.S. 4a).

ernment notified the court that no witnesses would be called, giving no explanation other than a desire to "reduce the number of witnesses and thus narrow the issues" (Op., J.S. 6a). Its evidence was limited to statistical and documentary exhibits plus brief excerpts from two depositions (F. 12, J.S. 50a).

The government now seeks a *de novo* review of the limited evidence which it presented, but Pabst submits that a plenary review is unnecessary because the documents before the Court provide a clear and reliable basis for upholding the judgment of dismissal for failure of proof and the review of the record sought by the government would be fruitless. Whatever evidence is regarded by the government as justifying reversal has undoubtedly been summarized in the Jurisdictional Statement. The trial judge's conclusions were not based on any exclusions of offered evidence, but were compelled by gaps in the proof resulting from failure to produce evidence. These gaps will be plainly seen from the opinion and findings (J.S. 1a-76a), and from the concessions made by the Jurisdictional Statement itself.

The Jurisdictional Statement, in its "Questions Presented," its "Statement" and its argument has misinterpreted the trial court's findings, conclusions and opinion, has erroneously stated facts in the record and has sought through the introduction of matters completely *dehors* the record to convince this Court that the questions involved are substantial. Fortunately, simple reference to the trial court's opinion will demonstrate these government errors and will also show that nothing really novel or substantial is involved in this case. The questions are only issues of fact common to all merger cases.

THE QUESTIONS PRESENTED

The government poses two questions (J.S. 2), both of which incorrectly represent the holding below and enormously exaggerate the asserted errors.

The first question attacks the trial court for "disregarding a marked industry trend toward concentration;" but, the court did not disregard any trend toward concentration which had been proven. Rather, as the judge stated, "No evidence was introduced to explain the relevancy or significance" of the statistics adduced on the issue (F. 49, J.S. 69a), and the evidence "absolutely fails to establish a trend toward concentration in the beer industry" (Op., J.S. 32a).

If this appeal presents any concentration issue, it is whether the trial judge reasonably concluded that the government had failed to prove concentration or a significant trend toward concentration in the beer industry. Even if, as the government contends, the court believed that concentration must be shown to be due to past mergers before a violation can finally be established on such grounds, the government's first question is purely hypothetical in the absence of proof that concentration or a trend toward concentration existed in the beer industry.

The second question states that the court held that the "only relevant market was the national market." But the court did not so hold. It is true that the court treated the nation as a whole as a relevant market, but this was because the government itself stipulated that the national market was a relevant market (Op., J.S. 2a; F.5,

J.S. 47a).[3] What the court held, and all that is subject to appeal on this issue, was that "the plaintiff has not satisfied its burden of proving that Wisconsin or the three-state area is a relevant geographic market" (Op., J.S. 8a; F. 17-42, J.S. 52a-63a; C. 4, J.S. 73a). As will be pointed out, the inadequacy of the government's proof on this question gave the court no alternative.

Restated correctly, the questions for appeal which fairly lie within the issues selected by the Jurisdictional Statement are whether the trial court erred in holding:

(1) that there was a failure of sufficient proof of a "marked industry trend toward concentration" having real significance on the issue of the competitive effect of this merger; and

(2) that there was an equal failure of proof that Wisconsin, or the three-state area composed of Wisconsin, Illinois and Michigan, is a relevant market area in which the merger's effect on competition can legally be tested.

THE FAILURE OF PROOF ON THE QUESTIONS PRESENTED IS CLEAR

The issues of whether there is a marked trend toward concentration in the beer industry, and of what is the relevant market, are obviously factual questions depending for their resolution upon information as to the "commercial realities" of the industry, *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 336-337 (1962). At the trial,

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[3] The Jurisdictional Statement does not mention this stipulation, and indeed seems to dispute the proposition agreed to by government counsel in the court below (J.S. 10, 11, 17, 18, 19 and 27), actually stating at one point that reliance on the national figures would give a "totally misleading impression" (J.S. 27).

however, the plaintiff called no witnesses and attempted to prove its allegations by reliance almost entirely upon statistics (J.S. 4, n. 3). Statistics are necessary in cases of this kind, but they are, of course, no better than the assumptions and calculations upon which they are based. Moreover, interpretation of complex business statistics, especially in making such crucial predictions about the future of competition in an industry as the government seeks to make here, is obviously a task best performed with the help of qualified, informed persons.

Such competent assistance was readily available, but not produced. A court might well infer that government counsel's reason for not calling any of the 71 witnesses whom they had selected out of 404 persons interviewed (F. 8-11, J.S. 48a-50a; Op., J.S. 3a-6a) and who had first-hand knowledge of the significance of statistics relied upon, was that it had been ascertained that their testimony would be damaging rather than helpful; *cf. Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 226 (1939). The trial judge, however, refrained from drawing such an inference (Op., J.S. 3a-7a). But whether or not such an inference is drawn, these circumstances highlight the incomplete nature of the government's proof and argue for great caution, if not healthy suspicion, concerning the speculations which counsel now make about the supposedly great significance of the statistics.[4]

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[4] The Jurisdictional Statement offers the excuse for the weaknesses in the statistics relied upon that "One must use the statistics available and appraise them as best he can" (J.S. 23). This justification would seem to be less than satisfactory in light of the government's failure to call any of the subpoenaed trade witnesses, all or most of whom could have interpreted the statistics knowledgeably.

1. Failure of Proof of Concentration or Trend Toward Concentration.

The government cannot contend that the beer industry could even remotely be considered as a concentrated industry today. In 1961, by agreed pretrial order the last year for which evidence was offered, there were 162 brewing companies in the stipulated national market, one less than there would have been but for the merger in issue (F. 47, J.S. 68a). The largest firm had less than 10 percent of sales (F. 49, J.S. 69a). 136 companies each sold over 25,000 barrels of beer (JX 44-46). Pabst and Blatz combined ranked third in 1961 and yet had less than 6 percent of sales (F. 45, J.S. 67a).

The government argues what it calls "a dramatic, long-sustained, and still continuing trend toward concentration" in the beer industry (J.S. 14). As proof of such a trend it points to a decline in the number of brewing companies from over 700 in 1934, the first full year after repeal of prohibition, to 162 in 1961 after 27 years of vast economic change including a great depression and two wars,[5] and to shares of national sales by the top 10 or top 25 breweries (J.S. 13-14). But the government has not offered any proof whatever, except the conjectures of counsel, as to

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[5] Without any record support or reference, the Jurisdictional Statement suggests that "The disappearance of numerous small, local companies" was due to "acquisitions or through inability to compete effectively with their large regional and national rivals . . ." (J.S. 15-16). But the court found: "[N]o evidence of any kind was offered by the plantiff as to any reason for the decrease in number of breweries or as to whether the decrease was accounted for by mergers or acquisitions or as to why any brewery may have ceased operations. There is no evidence in the record of any merger or acquisition in the beer industry other than the acquisition of Blatz by Pabst" (F. 48, J.S. 68a).

why its statistics show that this industry will ever reach a position of concentration with any antitrust significance.

The term, "concentration," must of course be used by the government in the same way it is used in the decisions of this Court and in the Congressional Committee reports in connection with the amendments to Section 7. A comparison of the "concentration figures" in this case with those in *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1963), and *United States* v. *Alcoa*, 377 U.S. 271 (1964), cited in the Jurisdictional Statement (J.S. 16), reveals how remote the beer industry is from any meaningful degree of concentration:

	Philadelphia (1)	Alcoa (2)	This Case (3) (1958)
Top firm	36%	29.1%	8.28%
Top 2	59	51.3	15.24
Top 4	78	77.3	25.41

(1) 374 U.S. at 331
(2) 377 U.S. at 278
(3) F. 49, J.S. 68a-69a

The legislative history shows that the relevance of concentration in a merger case is as a measure of whether an industry is non-competitive; that is, where

> " . . . three or four large concerns produce the entire supply. This latter pattern (which economists call oligopoly) is likely to be characterized by avoidance of price competition and by respect on the part of each concern for the vested interest of its rival * * * (The Merger Movement, A Summary Report, pp. 6-7)." S. Rep. No. 1775, 81st Cong., 2d Sess. p. 8 (1950).

This was the kind of "concentration" with which Congress was concerned in amending Section 7. *Brown Shoe Co.* v. *United States,* 370 U.S. at 333.

162 firms in the brewing industry are a long distance from "three or four large concerns" producing the entire supply. An industry in which no firm has as much as 10% of national sales, 14 firms have 2% or more, and 25 have 1% or more, bears no resemblance to the industries in which percentages of leading companies were considered concentrated by this Court (F. 45, J.S. 67a).

The plaintiff sought to meet its burden of proof at trial without expert economic or trade evidence. It depended then and still depends entirely upon the speculative predictions of its lawyers who confidently assume that decline in the number of firms will go on unabated until at some unspecified distant date beer production will be concentrated in a few firms. This is a heady prediction and it is not even internally supportable by statistical extrapolation. Examination of the figures shows that the rate of decline in the number of firms has itself declined in recent years (F. 47 and 48, J.S. 68a). Argument that the industry will probably level off in 10 or 15 years at a quite large competitive population of from 100 to 125 firms is as consistent with these figures, and with all that is in the record, as is a prediction of a drastic decline in the future. It is understandable that the trial court would not accept counsel's prediction without some reliable assurance from the witness stand by some qualified expert or trade witnesses. Under customary rules, the judge had no choice but to resolve doubts against the party having the burden of proof.

But a "dramatic" trend also is argued on the ground that the percentage of industry sales by the first 25 companies has increased from 42% in 1942 to 77% in 1961 (J.S.

13). No defense is offered by the government for selecting the abnormal war year, 1942, as the base year for this comparison nor for using the top 10 or top 25 instead of the top two, four or eight.[6] One is certainly called for. But even so, these statistics do not make a reliable case by themselves. In fact, the increase in the percentage of the first 25 companies from 1957 to 1961 was distributed among 13 different firms not one of which increased more than 2.3% and, characteristically of a competitive industry structure, the remaining firms experienced either slight drops in percentage or remained constant (F. 45, J.S. 64a-67a). Examination of the figures on the first 10 firms will reveal a similar story (F. 45, J.S. 64a-67a).

The government offered no evidence whatever of the actual nature of the beer industry, of the necessary scale of efficient company operations, of the distribution and selling characteristics and peculiarities of the industry, and of other facts and trends actually known to witnesses. In the face of this absolute lack of necessary evidence, the trial judge could surely not reasonably have been expected to have faith that the above statistics would tell a sufficient story upon which to conclude that a violation of law had been shown.[7]

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[6] When government counsel was asked by the court to explain the significance of the chart showing the percentages of the top 25, the only response was "We have another chart showing the top 10" (Transcript 182; F. 49, J.S. 69a).

[7] The government admits the weakness of its evidence by referring to extra-judicial statements and opinions not of record from two magazine articles (J.S. 14, n. 8). If these statements or opinions were admissible at all, they should have been offered in the form of exhibits or testimony from the witness stand, subject to cross-examination or rebuttal before the trial judge.

The additional government claim that the Pabst-Blatz merger itself "artificially accentuates, to a significant degree," the alleged trend (J.S. 15) is sheer rhetoric in the face of the figures. The combined market share of Pabst and Blatz in 1957, the year prior to the merger, was 4.49%, which was *less* than Pabst alone, 5.14%, in 1949 (F. 16, J.S. 52a). Moreover, in 1961, the combined percentage of the two, 5.83%, was appreciably less than the share of the two, 6.64%, in 1952, the last year before Pabst sales began to decline (F. 16, J.S. 52a).

2. Failure of Proof that Wisconsin or the Three-State Area Is a Relevant Market Area.

The Jurisdictional Statement attempts to transform the appellant's failure to prove its contentions that Wisconsin and the three-state area are relevant market areas into some sort of "novel" question (J.S. 17). Actually, a "novel" question is raised only if, contrary to the express language of Section 7, the requirement of relevant market determination is read out of the statute. This Court has repeatedly held that proof of a relevant market, defined both in terms of product and geography, is a necessary predicate to a consideration of the effects of any merger on competition.[8] It is readily demonstrable from the Opinion, Findings and Jurisdictional Statement why plaintiff failed to prove to the trial court's satisfaction that Wis-

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[8] *United States* v. *E. I. duPont deNemours & Co.*, 353 U.S. 586, 593 (1957); *Brown Shoe Co.* v. *United States*, 370 U.S. at 324, 328, 339; *United States* v. *Philadelphia National Bank*, 374 U.S. at 362.

consin or the three-state area are relevant sections of the country within the meaning of Section 7.[9]

At trial both sides accepted the *Brown Shoe* standard of proof of the relevant market:

> "Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic market selected must, therefore, both 'correspond to the commercial realities' of the industry and be economically significant." *Brown Shoe Co.* v. *United States,* 370 U.S. at 336-37.

The trial court has also tested the proof by the market definition standard of *Philadelphia Bank*:

> "Therefore, . . . as we recently said in a related context the 'area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, *and to which the purchaser can practicably turn for supplies,' Tampa Elec. Co.* v. *Nashville Coal Co.,* 365 U.S. 320, 327 (emphasis supplied) . . . ." *United States* v. *Philadelphia National Bank,* 374 U.S. at 359 (Op., J.S. 13a-14a and J.S. 18a, n.9).

What is the "pragmatic" evidence which the government now claims made a prima facie case that as a matter of "commercial realities" either Wisconsin or the three-state area was an area of effective competition as defined by this Court? It really consists of only one circum-

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[9] Pabst does not dispute the government's contention that under the law and decisions something less than the United States as a whole can be considered a relevant geographic market; its position here is simply that the evidence presented below *failed to prove* that either of the smaller areas alleged is a relevant market area. Of course, the plaintiff did have the burden of proof on the geographic market question, *United States* v. *Philadelphia National Bank,* 374 U.S. at 334.

stance—the market share percentages of the merging parties are more favorable to the government when viewed in the narrower context than in the national market (Wisconsin, 24% at the time of the merger; the three-state area, 11%; the nation, 4.49%, J.S. 27-8).

The government is understandably attracted to the possibility of inflating the relevant percentages. But the validity of such percentages is totally dependent upon the integrity of the market definition urged. What evidence is there to support this definition? A search of the Jurisdictional Statement, as well as the Opinion and Findings, discloses that there is none at all, as the trial judge held. Virtually all that appears is a theory, advanced by government counsel, that breweries sell more beer in the territory near the plant.[10] This theory is argued for several pages in the Jurisdictional Statement (J.S. 20-26).

The trial judge specifically considered this "home territory" contention and specifically found that there was no evidence to support it (F. 30, J.S. 58a). The Jurisdictional Statement challenges this finding but the effort to prove it "clearly erroneous" turns, not on the record, but entirely on the ruminations of counsel who concede that they cannot explain why such a local territory phenomenon exists, if it does (J.S. 25).

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[10] The government asserts without record reference that "Blatz sells 41% of its beer in Wisconsin" (J.S. 21). Actually, the court found that the percentages of national Blatz sales made in Wisconsin were as follows (F. 26, J.S. 56a):

1957	31.36 %
1958	23.49
1959	19.51
1960	17.49
1961	17.02

The record itself shows that the government's generalization is not reliable. More Blatz beer was sold in Michigan from 1958 to 1961 than in Wisconsin, even though it was not brewed in Michigan (F. 25, J.S. 56a; F. 13, J.S. 50a). In 1961, Blatz provided a higher percentage of Michigan's requirements (15%, GX 198) than of Wisconsin's (13%, GX 190), was sold in every state except one (F. 14, J.S. 51a), and was brewed in only one (Wisconsin) of the four states (Michigan, Wisconsin, Ohio and Indiana) leading in sales of the Blatz brand (F. 13, J.S. 50a; JX 59). From 1952 to 1961, Pabst enjoyed virtually as high or higher share of the market in each of three southern states (South Carolina, North Carolina and Georgia), many hundreds of miles from any of its plants, as it did in Wisconsin (computed from JX 18-21, 50-59) and was sold in every state in the nation (F. 14, J.S. 51a).

Even if it were clear that breweries as a rule sell more beer locally, this alone would not justify treatment of the local area as a separate market. It is still incumbent upon the government to advance some "pragmatic" explanation in accord with "commercial realities" to show why this fact has any bearing on the economic issue of what is the relevant market. This it has not done. If its theory has any reality at least one of its 71 proposed witnesses should have testified to facts demonstrating it.[11]

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[11] The Jurisdictional Statement makes an abortive effort to segregate each state on the basis of Pabst and Blatz pricing but is contradicted by the record. The government asserts that "Pabst adopted a separate pricing policy [for Pabst brand] in each State, and while in some cases a uniform price prevailed throughout a multi-State area, it was more common for the price to vary even as between neighboring States (GX 115)" (J.S. 26-27). GX 115 plainly indicates that Pabst brand prices did not in most cases vary from state to state. For example, in the following adjacent states the price

Reference to the Opinion and detailed findings of the trial judge shows that he not only held against the government theory on the facts, but had before him a great preponderance of evidence showing that neither Wisconsin nor the three-state area could be set apart as separate market areas (Op., J.S. 9a-22a). Specifically, he found that competition in the beer business crosses Wisconsin boundary lines in all directions in such magnitude that the state could not possibly be considered an economically distinct entity (Op., J.S. 17a; F. 18-22, J.S. 52a-55a). Wisconsin, where both merging parties were located, produces three and one-half times as much beer as it consumes (Op., J.S. 10a; F. 18, 19, 20, J.S. 52a-54a). At the same time, it imports from other states one-fourth of its total consumption, a figure which has been steadily increasing in recent years (F. 21, J.S. 54a; computation from JX 60-78, GX 257). In 1961 the second, sixth and eighth largest sellers in Wisconsin were out-of-state brewers (JX 78, GX 257). Indeed, 40% of the breweries selling beer in Wisconsin are located outside the state (F. 22, J.S. 55a).

In the face of this evidence, the government has conceded that "Wisconsin is not an economic island," "State boundaries do not necessarily have intrinsic commercial significance," and that the "Wisconsin figures taken

(Footnote [11] continued)
of a case of 24 12-oz. returnable bottles of Pabst beer to distributors on July 30, 1958 was $2.32: Wisconsin (actually $2.31742), Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado; the price was $2.46 in Illinois, Tennessee, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana; and it was $2.43 in Michigan, Indiana, Kentucky and Ohio. Concerning Blatz pricing the government asserts "Pabst sold . . . Blatz . . . at a higher price in [Wisconsin] than in any other [state]" (J.S. 27). The record shows that by taking account of taxes and discounts the price of Blatz to distributors was higher in Alabama, Oklahoma and South Carolina than it was in Wisconsin (GX 256, 124, Transcript 106-7).

alone" may "give a somewhat inaccurate picture" (J.S. 23, 26, 27). Nonetheless, it urges that even if its theory is not completely sound, some indeterminate part of it should be accepted. It would be well to recall the warning of Professors Kaysen and Turner that "without a minimally reasonable definition of markets, criteria based on quantitative shares become whimsy," *Antitrust Policy: An Economic and Legal Analysis* (1959) 134.

As for the three-state area, the finding of a failure of proof that it was a relevant market was based on a total lack of evidence (F. 40-42, J.S. 62a-63a). The Jurisdictional Statement adds nothing to this void and the available record evidence shows the same pattern in the three states as in Wisconsin. Thus, while the three-state area was a beer surplus area, nearly 25% of the beer it consumed was produced outside of the area (computed from JX 91-100, GX 257); roughly 40% of its output was consumed outside of the three states (computed from JX 9-11, JX 19-21, JX 91-100 and GX 257); and the leading sellers of beer in the area compete in an area which is very much larger than the three states (see JX 32-46, 91-100). In view of this record it is very clear why the court concluded that the plaintiff failed to prove the relevance of the disputed sections of the country.

Even if the government had established one or the other of the above areas as a relevant market, it still would not have made a *prima facie* case. There is no evidence whatever, other than bare market shares, of the effect of the merger within either of these areas. Even at face value, the percentages are not high enough to activate the presumption of effect outlined in the *Philadelphia Bank* case, 374 U.S. at 363, and the government admits that these percentages cannot be taken at face value (J.S. 27-28). More-

over, the *Philadelphia Bank* presumption also requires a showing that the merger "results in a significant increase in the concentration of firms," and as pointed out above, this merger has been shown to have had no effect on concentration.

CONCLUSION

The government lost below because of serious failures of proof. These deficiencies are clear on the face of the detailed Opinion, Findings and Jurisdictional Statement now before the Court. It is the function of an appeal to correct errors of the trial court, not to repair deficiencies in plaintiff's proof. The government's evidence did not measure up to its complaint allegations and the judgment of the lower court should be affirmed.

Respectfully submitted,

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September 1965

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES OF AMERICA, APPELLANT

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., AND THE VAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court dismissing the complaint (R. 422) is reported at 233 F. Supp. 475. An earlier opinion of the district court denying the motions of Schenley Industries, Inc., and The Val Corporation for dismissal as to them (R. 27) is reported at 183 F. Supp. 220.

JURISDICTION

The final judgment of the district court was entered on October 13, 1964 (R. 481). The notice of appeal was filed on December 11, 1964, and probable jurisdiction was noted on November 8, 1965 (382 U.S. 900; R. 484). The jurisdiction of this Court is con-

ferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Continental Can Co.*, 378 U.S. 441.

QUESTION PRESENTED

The ultimate question presented is whether the government's evidence established *prima facie* that the acquisition of Blatz Brewing Company by Pabst Brewing Company violated Section 7 of the Clayton Act, as amended. An important subsidiary question is whether the district court erred in holding that the government had failed to establish *prima facie* that the State of Wisconsin was an appropriate section of the country or geographic market in which to test the acquisition.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

STATEMENT

On July 30, 1958, Pabst Brewing Company ("Pabst") acquired from Schenley Industries, Inc.,

the assets and business of Blatz Brewing Company ("Blatz"), a wholly owned subsidiary of Schenley (Fdg. 3, R. 456).[1] On October 1, 1959, the government filed a complaint (R. 22–27) charging that the acquisition violated Section 7 of the Clayton Act, as amended, because its effect might be substantially to lessen competition or tend to create a monopoly in the production and sale of beer in the continental United States and in two geographic submarkets—Wisconsin, and the contiguous three-State area of Wisconsin, Michigan, and Illinois. At the close of the government's case, the district court granted Pabst's motion to dismiss the complaint under Rule 41(b) of the Federal Rules of Civil Procedure on the ground that upon the facts and the law the government had shown no right to relief.[2]

1. THE FACTS

(a) *Concentration*

Nationally. Since the end of prohibition, the domestic production and consumption of beer has doubled (Fdg. 44, R. 471–472). At the same time,

[1] After the acquisition the name of the subsidiary was changed to Val Corporation (Fdg. 2, R. 456); Val and Schenley were joined and retained in the action as defendants for purposes of relief (R. 27). The consideration paid Schenley for the assets and business of Blatz consisted of $11 million in cash and $3.5 million in debentures, as well as shares, and purchase warrants for shares, of Pabst common stock (Fdg. 3, R. 456).

[2] Pabst in its answer raised a "failing company" defense, alleging that it had acquired Blatz in order to avoid the consequences of its own declining sales and increasing losses (R. 36–37). In dismissing at the close of the government's case the district court did not reach or decide the validity of this defense.

the number of brewers has declined. There were 708 in 1934, 206 in 1957, and only 162 in 1961 (Fdg. 47, R. 476–477; GXS. 216–236 (unprinted). According to the *New York Times*, February 13, 1966, Section 3, pp. F1, 43, by 1965 the number of brewers was down to 134.

Paralleling the decline in the number of beer producers has been an increase in the concentration of sales of beer in the larger firms. The 10 leading brewers accounted for 33 percent of total domestic beer sales in 1948, for 45 percent in 1957, and for 53 percent in 1961 (GX 211, R. 346). In 1961, the four largest brewers had an aggregate share of 27.62 percent of all beer sales (Fdg. 45, R. 472–475).

Wisconsin. Since the repeal of prohibition, the State of Wisconsin has been a major area of beer production; since 1947, it has consistently ranked first or second among the States, producing 13 percent of the nation's total production in 1957 (Fdg. 18, R. 462–463). Wisconsin breweries consistently produce more beer than is consumed within the State. Indeed, the major portion of its production is sold elsewhere (Fdgs. 18–19, R. 462–464). It is, however, a leading beer-consuming State as well; it has ranked either eighth, ninth, or tenth among the States in beer consumption for each of the years 1934–1961 (Fdg. 19, R. 463), and is by far the leading State in per capita consumption (GX 214, R. 349).

Production and consumption of beer has increased in Wisconsin as well as nationally, but—again conforming to the national picture—the number of brewers selling in the State has declined sharply, from 77 to 54 between 1955 and 1961 alone (Fdg. 22, R. 464). Sales

concentration is much higher in Wisconsin than it is nationally. In 1957, the top four sellers accounted for almost 48 percent of all beer sales in the State (GX 186, R. 321)—twice the national average (see p. 4, *supra*). Paralleling the rise in concentration in the industry as a whole, this figure increased to 59 percent by 1961 (GX 190, R. 325). Sales shares of the principal sellers in Wisconsin have tended to remain very stable (see App. B, *infra*, pp. 50–51 [3]).

(*b*) *Distribution and Marketing*

In general, the distribution of beer is localized. In Wisconsin, for example, only one-third of the nation's brewers made any sales in 1957 (Fdg. 22, R. 464; Fdg. 47, R. 475), and almost 80 percent of all the beer consumed in that State was produced by brewers having breweries there (see JX 19, R. 157; JX 66, R. 204; GX 257, R. 403). More than half of the balance came

[3] Appendix B is a table showing the rank and sales share by year for brewers doing business in Wisconsin for the period 1955–1961. The only firms excluded are those which had less than one percent of total beer sales in the State; firms included accounted for more than 80 percent of such sales. The table is based on JX 60–78, R. 198–216.

The government also introduced evidence with respect to the three-State area of Wisconsin, Illinois, and Michigan, a major area of both beer production and consumption, where 16.5 percent of the nation's beer was consumed in 1957 (JX 91–92, R. 229–230). Despite increasing demand in the area (JX 92–100, R. 230–238), the number of brewers selling there declined from 104 in 1957 to 86 in 1961 (GX 208, R. 343). Simultaneously, concentration increased. In 1957, the four leading brewers accounted for 37 percent of the area's total beer sales and the eight leading for 59 percent (GX 204, R. 339); by 1961 these figures were 44 and 68 percent respectively (GX 208, R. 343).

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from the Hamm Brewing Company (R. 198, 201, 204), which has a brewery in St. Paul, Minnesota, just across the State line from Wisconsin (GX 257, R. 403). Of the 20 leading sellers in Wisconsin, 17 operated breweries there, 2 (including Hamm) had breweries in neighboring States, and the brewery of the third was in St. Louis, Missouri. Brewers having breweries in the three-State area of Wisconsin, Michigan, and Illinois accounted for 77 percent of the area's total sales in 1957; another 22 percent was sold by brewers with breweries in adjacent States (see JX 91–92, R. 229–230; GX 257, R. 403).[4] Brewers find it advantageous to have a brewery in each important market area (see GX 109, R. 249; GX 145, R. 296).

Marketing techniques in the beer industry emphasize reliance upon wholesale distributors, advertising and consumer promotions (see R. 130; GX 137, R. 276, 279–280; GX 140, R. 284–285; GX 145, R. 292; GX 152–153, 155–156, R. 303–319). This is because the "real sales struggle is the struggle between brands of beer" and it is "getting the consumer acceptance that counts" (R. 130, 131 (depositions of Pabst's Chairman and its Vice President)). In 1957, for example, Pabst spent on advertising and promoting its "Pabst" brand alone more than $8.5 million, equal to between $3 and $3.50 per each barrel sold (see JX 55 and GX 133, R. 193, 272). And Pabst sold many brands (GX 107, R. 244–245), for each of which it designated a different manager to assure effective promotion of that brand (R. 291, 304).

Marketing and distribution are organized and con-

[4] The close correlation between brewery location and sales area is further shown by the pattern of sales of Pabst and Blatz (*infra*, pp. 7–9).

ducted on a State-by-State basis (GX 137, R. 276–280; GX 140, R. 283–285; GX 141, R. 287; GX 142, R. 289; GX 145, R. 294; GX 153, R. 203–310; GX 156, R. 316) in part because of the varying legal restrictions imposed by the States on the marketing of beer (GX 142, 144, R. 289–291; GX 147, 148, 150, R. 298–302). For example, Pabst planned marketing strategy for Washington, D.C., separately, analyzing the distinctive characteristics of this area: the size, income level, and purchasing habits of its population, the number of package liquor stores, and other relevant factors (GX 153, R. 305–310).

The prices charged distributors by the brewers tend also to be set on a State-by-State basis (GX 115, 124, R. 253–259, 261–271), though prices tend to be uniform within the same State. These variations obtain even as between neighboring States.

(*c*) *The Merging Companies*

In 1957, the last complete year before the acquisition, Pabst was the nation's tenth largest brewer. Its sales of more than 2.5 million barrels amounted to 3.02 percent of the nation's total sales of domestic beer (Fdg. 45, R. 472–475). It operated four breweries (located in Milwaukee, Wisconsin, Los Angeles, California, Peoria, Illinois, and Newark, New Jersey), from which it sold in all the States (Fdgs. 13–14, R. 460–461). However, its sales were concentrated in the areas in which it had breweries. Thus, about 50 percent of its total sales were derived from the three States where its breweries were located—California, Illinois, and Wisconsin—plus New York, which is

just across the Hudson River from Pabst's Newark brewery (JX 47–55, R. 185–193). Wisconsin alone accounted for more than 13 percent of Pabst's total sales in 1957 (see JX 55, R. 193), and almost 100 percent of the Pabst beer sold in that State was produced by Pabst's Milwaukee brewery.[5] That year, Pabst was the fourth largest seller of beer in Wisconsin, with 11.14 percent of total sales (GX 186, R. 321), and seventh in the three-State area with 5.48 percent (GX 204, R. 339).

Blatz was the nation's eighteenth largest brewer at the time of the acquisition; its production of 1.25 million barrels in 1957 gave it 1.47 percent of all domestic beer sold in this country (Fdg. 45, R. 472–475). Although Blatz sold beer in 40 States before the acquisition, its sales were heavily concentrated in Wisconsin, where its single brewery was located (in Milwaukee) (Fdgs. 13–14, R. 460–461). Between 31 percent and 46 percent of its sales were consistently made in that State (see JX 47–55, R. 185–193, 465), and between 55 and 73 percent in the three-State area. Blatz was the leading seller of beer in Wisconsin, with 12.81 percent of total sales there (GX 186, R. 321),

[5] According to Pabst, "Nearly 69% of the 1958 production of Pabst beer in Milwaukee was shipped beyond the state boundary for consumption." Brief in the District Court of Defendant Pabst Brewing Company in Support of its Motion to Dismiss, pp. 19–20. (A copy of this brief has been lodged with the Clerk of this Court.) The remaining 31 percent was therefore sold in Wisconsin. Since 31 percent of 1,054,314—the total amount produced in Wisconsin (GX 110, R. 251)—is 326,837 barrels, and Pabst sold 333,244 barrels in Wisconsin (JX 56, R. 194), almost 100 percent of the beer it sold in Wisconsin was supplied by its Milwaukee plant.

and the sixth largest in the three-State area, with 5.84 percent (GX 204, R. 339).

(*d*) *The Effects of the Merger*

By acquiring Blatz, Pabst became the nation's fifth largest brewer, with 4.49 percent of the industry's total sales on the basis of 1957 figures (Fdg. 45, R. 472–475). By 1961, it had increased its rank to third and its sales share to 5.83 percent. The shares of the two largest brewers that year were 9.55 percent and 6.49 percent respectively, and the aggregate share of the four largest (including Pabst) was 27.62 percent—up from 24.22 percent in 1957 (Fdg. 45, R. 472–475). In the three-State area, the acquisition made Pabst number 2, with more than 11 percent of total beer sales in the area (GX 204, R. 339), and by 1961 Pabst was first with 15 percent and the four leading brewers had 44 percent (GX 208, R. 343). In Wisconsin, the acquisition made Pabst number one with 23.95 percent of total beer sales in that State (GX 186, R. 321). By 1961, Pabst's share had increased to 27.41 percent and that of the four leading suppliers from 48 percent (before the acquisition) to 59 percent (GX 190, R. 325). In the following table, based on GX 186, R. 321, we show the impact on sales concentration in Wisconsin produced by the merger:

	Rank in sales—		Percentage
	Before merger	After merger	
Total of Pabst and Blatz		1	22.95
Blatz	1		12.81
Hamm's	2	2	12.15
Schlitz	3	3	11.64
Pabst	4		11.14
Miller	5	4	5.81
Kingsbury	6	5	4.36
Helleman	7	6	4.00
Anheuser-Busch	8	7	3.14

2. THE DECISION OF THE DISTRICT COURT

In dismissing the complaint on defendants' motion at the close of the government's case, the district court held, first, that neither Wisconsin nor the three-State area could be considered a "section of the country" or relevant geographic market within the meaning of Section 7 of the Clayton Act for purposes of appraising the competitive effects of the challenged acquisition. In holding that Wisconsin was not a relevant market (R. 428–439), the court stated, *inter alia,* that the amount of beer consumed in that State—3.66 percent of the nation's total—was not large enough to make it a commercially significant market; that the high degree of success attained by the merging companies in Wisconsin did not necessarily reflect "the intensity of competition between them"; that beer was freely imported into and exported out of Wisconsin; that there "is no evidence * * * that competition in the beer industry is in any manner localized * * * or affected by the location of a brewery" (Fdg. 30, R. 467); and, in general, that there was no factor which set

Wisconsin apart from other States and justified treating it as a distinct geographic submarket. The district court followed the same analysis in holding that the three-State area was not "a section of the country" either (R. 439–441).

The court then turned to the effects of the merger in the only area it considered relevant—the continental United States—and ruled that the government had not proved that the merger was likely to lessen competition substantially (R. 452). After stating that Pabst's share of that market after the acquisition was not large enough *per se* to permit the inference of probable anticompetitive effects, the court held that it could give no weight to the evidence of a trend toward concentration in the industry, since there was no showing that this development was the result of prior mergers rather than of natural economic forces (Fdg. 48, R. 476).

ARGUMENT

INTRODUCTION AND SUMMARY

I

Since 1934, when prohibition was repealed, the production and consumption of beer in this country has doubled. During the same period, the number of beer producers has declined steeply and the relative size of a handful of large producers has increased apace. This movement—which appears, if anything, to have gathered momentum in recent years—has raised concentration to high levels in many areas. Thus, in the State of Wisconsin (the State with the greatest per

capita consumption of beer), four brewers in 1957 accounted for almost 48 percent of all beer sales.

It was against this background that the government in 1959 filed a complaint under the Antimerger Act[*] against the Pabst Brewing Company, the nation's tenth largest brewer, challenging Pabst's acquisition in 1958 of the Blatz Brewing Company. At the time of the merger, Blatz was the leading seller of beer in Wisconsin and Pabst ranked number four; the merger gave Pabst 24 percent of all beer sales in the State and substantially increased the share of the larger sellers as a group. Concentration was also substantially increased in a three-State area (Wisconsin, Michigan, and Illinois) and nationally.

At the close of the government's case, the district court ordered the complaint dismissed. The court held that the government had failed to make a *prima facie* showing that the merger would probably lessen competition substantially—the statutory standard—because (1) it had not proved that either Wisconsin or the three-State area was a relevant market; and (2) treating the nation as the market, the industry trend toward concentration relied on by the government was irrelevant because it was not shown to have been caused by mergers. We think the district court erred, and we urge this Court to reverse the judgment dismissing the complaint. Since the sole question before the Court is whether the government adduced enough evidence of the anticompetitive consequences of the merger to shift the burden of presenting evi-

[*] The Celler-Kefauver Act, 64 Stat. 1125 (1950), amending Section 7 of the Clayton Act, 15 U.S.C. 18.

dence to the defendants, if the Court agrees with the government the case will go back to the district court to hear defendants' evidence.

The issues of this case, in its present posture, are primarily ones of standards rather than of fact. The most important issue involves the proper standard for determining when a lesser territorial area than the entire country is a proper market in which to appraise a merger's competitive impact. In *United States* v. *Philadelphia National Bank*, 374 U.S. 321, this Court established the principle that the interest in manageable and effective enforcement of Section 7 justifies relying heavily on percentage shares of a relevant market for the decision of horizontal-merger cases. Under this principle, correct determination of the relevant market under rational and workable standards becomes essential to sound administration. We therefore devote a major portion of our brief to the exploration of the issue of standards for market definition. We then show that applying proper standards—as the court below did not—it is clear that Wisconsin is *prima facie* a relevant market in which to test the competitive effects of the challenged merger.[7]

II

Section 7 proscribes mergers likely to injure competition substantially in any "section of the country." While it is clear that the sale of beer in Wisconsin

[7] In the interest of simplifying analysis, we concentrate primarily on the Wisconsin market, while pointing out that the district court also erred in its rulings on the other issues. See p. 22, n. 13, and p. 45, n. 34, *infra*.

has sufficient commercial importance to render a merger that creates a probable substantial lessening of competition in such trade illegal, it must also be shown that the State is a proper market for appraising the merger's competitive effects. If Wisconsin is such a market, a finding of *prima facie* illegality follows directly from the standard of *United States* v. *Philadelphia National Bank, supra,* since the merger produced a firm with an undue percentage share of the market and substantially raised the preexisting level of concentration. While the percentage share of the resulting firm in this case was slightly smaller than in *Philadelphia Bank,* the difference—given the purposes of the Act and the rationale of the Court's opinion—is immaterial. In any event, there are additional factors which make this an *a fortiori* case for applying the *Philadelphia Bank* standard.

The difficult question, therefore, is whether Wisconsin is a proper Section 7 market. The purpose of defining a market is to enable intelligent appraisal of the competitive significance of a transaction's effects. Where the complaint is against a merger of direct competitors, the chief function of market delineation is to identify an area within which sales percentages can be relied upon for substantial guidance in measuring the impact of the merger. While it is clear that Section 7—which proscribes any merger whose effect "in *any* section of the country" [8] may be substantially anti-competitive—contemplates that a State, a group of States, a metropolitan area, or a series of such areas may define an appropriate locus in which to ap-

[8] Emphasis added.

praise competitive effects, sales percentages in a particular such area may, in two respects, overstate a merger's impact. The merging firms may not actually be competitors: one may sell exclusively to purchasers located in one part of the area and the other to completely different purchasers located in another part, in which event the merger will not directly alter the structure of competition in the area[9] even though it increases the acquiring firm's percentage share of sales in the area as a whole considerably. Even if the merging firms are actual competitors in an area, figures showing their sales as a percentage of the area's total sales may have no competitive significance if there are no economic barriers (for example, in the form of transportation costs) impeding the entry of other sellers of the same product. The fact that a few sellers have a large share of the sales in an area is significant only if those sellers enjoy some competitive advantage over those not selling there which enables them, within a range at least, to ignore the others in setting prices.

These considerations demonstrate the need for market definition in a horizontal-merger case and point the way toward a proper legal standard to guide such definition. We submit that where the government relies on sales percentages as a basis for arguing that a horizontal merger adversely changed the structure of competition in a section of the country, it need show only (1) that both the acquired and acquiring firm made substantial sales to customers located in that

[9] It may, however, eliminate a significant potential competitor. See pp. 27–28, n. 17, *infra*.

section, and (2) that there is reason to believe that sellers whose sales were not included in the market suffer from some disadvantage in competing with those whose sales were included. Such a showing was made here and establishes the *prima facie* validity of the government's selection of Wisconsin as a proper geographic market.

First, both Pabst and Blatz made substantial sales to customers located in the State at the time of the merger. Second, there are persuasive if not conclusive indications that the sellers actually selling in the State had a significant competitive edge over other beer producers who might have wanted to sell there. We base the second conclusion on, among other things, evidence that the effective distribution of beer requires the creation of brand allegiance which in turn requires intensive advertising and promotional efforts and the enlistment of distributors who will be vigorous and effective in creating a market for the brand in the State or local area where penetration is desired. A firm whose brands are unknown in an area cannot readily sell there. This is attested by the large and stable market shares that a few brewers have persistently enjoyed in Wisconsin, and by their ability to charge different prices in that State from those they charge elsewhere. The obstacles that confront prospective sellers in Wisconsin—however well entrenched such sellers may be elsewhere—*prima facie* justify excluding them from, and treating the sale of beer in Wisconsin as, a relevant market for appraising the competitive effects of this acquisition.

The order of our argument is thus as follows: (1) Assuming Wisconsin is a proper market for purposes of Section 7, a *prima facie* case of illegality has been established; we put this issue first because it is by far the simpler and can be disposed of briefly and because it helps lay the groundwork for our general discussion of the market problem. (2) Judged by proper standards, the government established that Wisconsin is, at least *prima facie,* an appropriate market for testing the legality of the challenged acquisition.

I. ASSUMING THAT WISCONSIN IS A PROPER GEOGRAPHIC MARKET FOR PURPOSES OF THIS CASE, THE GOVERNMENT'S EVIDENCE ESTABLISHES *PRIMA FACIE* THAT THE EFFECT OF PABST'S ACQUISITION OF BLATZ MAY BE SUBSTANTIALLY TO LESSEN COMPETITION IN THE SALE OF BEER IN THAT STATE, IN VIOLATION OF SECTION 7

A. THE SALES PERCENTAGES OF THE LEADING SELLERS OF BEER IN WISCONSIN MEET THE STANDARD OF PRESUMPTIVE ILLEGALITY OF *UNITED STATES* V. *PHILADELPHIA NATIONAL BANK*

The framers of the Antimerger Act expressed particular concern with what economists call "oligopoly," the condition in which most of the business of a market is controlled by a few firms.[10] Theory and experience teach that when a market becomes highly concentrated or oligopolistic in structure, the intensity and effectiveness of competition—and in particular price competition—are likely to diminish. Each of the major sellers bulks so large in the market that a price cut by one cannot be ignored by the

[10] See, *e.g.*, S. Rep. No. 1775, 81st Cong., 2d Sess., p. 5; *United States* v. *Aluminum Co. of America*, 377 U.S. 271, 280; *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 363.

others, but must immediately be matched. Price cutting therefore does not pay, and tends to be avoided; "parallel policies of mutual advantage, not competition * * * emerge." *United States* v. *Aluminum Co. of America,* 377 U.S. 271, 280.

In the perspective of the Antimerger Act—a statute whose dominant purpose is to prevent the creation or aggravation of oligopolistic conditions—the most harmful kind of merger, obviously, is one that by uniting firms which are already among the leading sellers in the market appreciably increases the danger of domination by the few. This, coupled with the pressing need in the merger area for clear and workable standards, led this Court in *United States* v. *Philadelphia National Bank,* 374 U.S. 321, to rule that a merger is presumptively illegal when it (1) produces a firm that has "an undue percentage share"—in the range characteristic of oligopoly—of the relevant market, and (2) results in "a significant increase" in the level of concentration in the market. 374 U.S., p. 363. The resulting firm in that case had a 30 percent market share, and the merger increased the aggregate share of the two leading firms one-third. The Court held that these facts brought the merger within its standard. *Id.,* pp. 364–365.

On the assumption that Wisconsin is an appropriate market, we think the standard of *Philadelphia Bank* has been met here. In 1957,[11] Blatz accounted for almost 13 percent of all beer sales in Wisconsin, which made it the leading seller there. Pabst was number four with more than 11 percent. The four

[11] The last complete year before the merger.

largest sellers had almost 48 percent, the eight largest 65 percent, and no other seller more than 2.78 percent. The merger produced a firm having a 24 percent market share, and it increased the aggregate share of the two largest firms from 25 to 36.6 percent, the share of the three largest from 36.5 to 48 percent, and that of the four largest from 48 to 58.6 percent. These facts place the merger within the standard.

First, in terms of the increase in concentration produced by the merger, this is an *a fortiori* case for applying the presumption of illegality. The challenged acquisition increased the aggregate market share in Wisconsin of the two largest firms by more than 40 percent; the corresponding figure in the bank case was only 33 percent.

Second, although Pabst's market share after the merger (24 percent) was slightly smaller than that of the merging companies in the bank case (30 percent), we think it was still "undue" under the standard of *Philadelphia Bank*. The standard is qualitative. The Court emphasized that the particular percentages at bar did not establish the standard's outer boundaries; indeed it intimated (374 U.S., p. 364, n. 41, and 366), and later decisions have made unmistakably clear (see, *e.g.*, *United States* v. *Continental Can Co.*, 378 U.S. 441, 461), that a market share as large as that which Pabst enjoyed as a result of acquiring Blatz would bring an acquisition within the zone of presumptive illegality. If Congress' concern with the competitive dangers of oligopoly requires that in the absence of a clear showing of justification any merger that palpably increases concentration in a

market to a level plainly oligopolistic is, without more, to be deemed illegal—the teaching of *Philadelphia Bank*—then a merger that creates a market structure in which one firm has almost one-quarter of all sales (almost twice what any firm previously had) and three firms almost one-half (also a steep rise over their pre-merger share) is unlawful. For a market so concentrated is unlikely to display vigorous competition.[13]

B. ADDITIONAL FACTORS, SUCH AS THE STRONG TREND TOWARD CONCENTRATION IN WISCONSIN AND NATIONALLY, MAKE THIS AN *A FORTIORI* CASE

1. Under the standard of *Philadelphia Bank,* the plaintiff is not required to adduce evidence that concentration in the market affected by the challenged merger was on the rise, a factor this Court has deemed highly probative of a merger's anti-competitive impact. *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 322. Nevertheless such evidence was introduced here, and shows, for example, that between 1955 and 1961 alone, the number of beer producers in Wisconsin declined by 30 percent (see Statement, *supra,* p. 4). The trend toward concentration is not an isolated characteristic of the Wisconsin market; it is national in scope. In 1948 the 10 largest brewers accounted for 33 percent of all beer sales in the United States; by 1957, this figure was 45 percent and by 1961, 53

[13] Professor Bain would classify the market structure in Wisconsin produced by the acquisition as an oligopoly of "'high-moderate' concentration," where concentration is "certainly enough to produce a substantial degree of oligopolistic interdependence among the few largest firms." Bain, *Industrial Organization* (1959), pp. 128–129.

percent (GX 211, R. 346). In 1957 the four largest brewers accounted for about 24 percent of all beer sales and the eight largest for 39 percent; by 1964 these figures were 32 and 51 percent respectively (JX 32, R. 170; *Brewing Industry Survey—24th Edition* (Research Co. of America, 1965), p. 106).

Against this background of rapidly rising concentration, the probable anticompetitive effects of the challenged acquisition take on an added dimension. For there can be no hope that the merger's adverse impact upon the structure of competition will be counteracted by natural economic forces pressing toward the decentralization and dispersion of economic power; the prospect is quite the contrary. The forces that independently of mergers are pushing the market steadily in the direction of excessive concentration compound the harmful effects of this merger.

The court below held that evidence of a trend toward undue concentration is relevant only when the trend is shown to have resulted from prior mergers, rather than from normal competitive forces with which Congress had no wish to interfere. This confuses two wholly different points. It is true that the Antimerger Act was not intended to interfere with normal competitive forces or to bar increases in concentration not attributable to mergers or other corporate acquisitions. But here a merger *is* involved—a merger that artificially accentuated a persistent trend (both in Wisconsin and in the industry as a whole) in the direction of domination by a handful of large producers. This merger should be

judged against the background of the actual economic conditions in the industry, and not as if they did not exist. The district court's view would mean that the legal consequences of a merger are the same whether it occurs in an industry or market characterized by a large and constant or growing number of firms or in one where there is a marked trend toward oligopoly. Such a rule would not only be artificial and unrealistic but would disregard the policy of Section 7. The disappearance of numerous small, local companies, whether it be through acquisitions or through inability to compete effectively with their large regional and national rivals, underscores the public importance of barring combinations which eliminate as independent competitors such strong and viable companies—like Blatz—as remain.[13]

2. The error of the district court's ruling on this question is highlighted by another highly probative circumstance: whatever the prior history of this industry, Pabst's acquisition of Blatz, it is now evident, was the first of a series of acquisitions involving substantial beer producers.[14] Not only have these ac-

[13] The district court's holding that the government's evidence of an industry-wide trend toward concentration was irrelevant formed the principal basis for the court's dismissal of the complaint with respect to the national market. The error of this holding vitiates, we submit, its ultimate conclusion that the government had failed *prima facie* to establish that the merger's effect in the national market (which defendants conceded to be a proper market) brought it within the prohibition of the statute.

[14] Some of these acquisitions have already been challenged by the government:

(1) *United States* v. *Falstaff Brewing Corp.* (and Narragansett Co), Civ. No. 3523 (D. R.I.), filed July 13, 1965, 5 Trade

quisitions further accelerated the national trend toward concentration; they have removed as independent competitive factors some of the firms most capable of possible eventual expansion into highly concentrated local markets. By eliminating potential competition of this character, such acquisitions have

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Reg. Rep., ¶45,065. Falstaff, which entered into an agreement for the acquisition of Narragansett, was the fourth largest brewing company in the nation in 1964, with almost six percent of all sales. Narragansett ranks twenty-first nationally with 1.29 percent of beer sales in the country. It concentrates its efforts principally in New England, where it has its plant and where it is the leading seller, with 21 percent of sales. Falstaff, which sold in 32 States, was not yet active in the New England area.

(2) *United States* v. *Rheingold Corp., Jacob Ruppert, et al.*, Civ. No. 65, Civ. 3372 (S.D.N.Y.), filed November 9, 1965, 5 Trade Reg. Rep., ¶45,065. Rheingold ranked 11th on a national basis in 1964, with 3.1 percent of sales. It markets its beer in New England and the States of New York, New Jersey, Delaware and Pennsylvania; the two breweries it operates are in New York and New Jersey. It is the largest seller in the New York metropolitan area, with 16 percent of sales, and the seventh largest in New England, with 6 percent of that section's sales. Ruppert, the firm Rheingold proposes to acquire, ranks 20th on a national basis with 1.6 percent of sales, but markets half its beer in New England and the remaining half principally in New York and New Jersey. The brewery it operates is located in New York. It is the second largest seller in New England, with 13.4 percent of sales, and in the New York metropolitan area it accounted for more than 5 percent of sales in 1964.

(3) *United States* v. *Pittsburgh Brewing Co., et al.*, Civ. No. 65–1406, (W.D. Pa.), filed December 28, 1965, 5 Trade Reg. Rep., ¶45,065. This case involves the proposed purchase by Pittsburgh Brewing of a controlling interest in Duquesne Brewing. Both of these firms have their plants in Pittsburgh and concentrate their sales in Pennsylvania, Ohio, West Virginia, Virginia, Maryland, New Jersey and New York. On a national

made it even less likely that natural forces of competition in the beer industry may reverse the strong trend toward concentration that has taken hold in Wisconsin (as it has throughout the country) and was materially accelerated by the challenged acquisition. They may also have removed a significant restraining effect upon oligopolistic behavior in local beer markets.[15]

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basis, both are among the 30 leading brewers, and in Pittsburgh and the surrounding area ranked first and second in 1964, accounting together for about half of all beer sold in the area. In the Upper Ohio Valley, they ranked second and third, accounting together for 25 percent of all sales.

(4) *United States* v. *Jos. Schlitz Brewing Company, et al.*, Civil Action No. 42127 (N.D. Calif.), filed February 19, 1964, 5 Trade Reg. Rep., ¶45,064. This complaint challenges the acquisition by Schlitz of Burgermeister Brewing Corporation and Schlitz' proposed indirect acquisition of a controlling interest in General Brewing Company, formerly The Lucky Lager Brewing Co. of California. Schlitz, which had plants located in Wisconsin, New York, Florida, Missouri, California and Hawaii, is the second largest brewer in the country, with about 6.5 percent of sales. In 1961, it acquired Burgermeister, which with less than one percent of sales on a national basis ranks among the thirty leading sellers (JX 44, R. 182). Most of its sales were made in California, where it had its plant and ranked fifth, with about 8.5 percent of sales. As of 1961, Lucky Lager was the twelfth leading seller in the United States, with 2.51 percent of national sales. More than 60 percent of its total sales were made in California, where it was the top seller with over 18 percent of all California sales and where it operated two of its four breweries. Its other two plants were in Utah and in Washington.

[15] Cf. *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, 173–174; *Beatrice Foods Co.*, 3 Trade Reg. Rep., ¶17,244 (FTC); Hines, *Effectiveness of "Entry" by Already Established Firms*, 71 Q.J. of Econ. 132 (1957); and see pp. 27–28, n. 17, *infra*.

II. SALES OF BEER IN WISCONSIN DEFINE A PROPER MARKET IN WHICH TO TEST THE CHALLENGED ACQUISITION

Having argued that the increase caused by the Pabst-Blatz merger in the already large share of total beer sales in Wisconsin enjoyed by a small number of producers demonstrates *prima facie* the illegality of the merger, we now turn to the assumed premise of this argument—that sales percentages in Wisconsin are meaningfully related to the statute's concern; that Wisconsin, in other words, is an appropriate "market." [16]

A. MARKET DEFINITION IN A HORIZONTAL MERGER CASE PROVIDES A FRAMEWORK FOR APPRAISING THE COMPETITIVE SIGNIFICANCE OF CONCENTRATION STATISTICS

This Court has on several occasions been asked to infer adverse competitive effects from the fact that a

[16] This Court has treated as a threshold question in determining the relevant geographic market in a Section 7 case whether the area in question is substantial enough to warrant concern with the effects on competition of a challenged merger. Since the statute proscribes any merger that may substantially lessen competition in "any section of the country," a merger is forbidden even if its effects are felt primarily in an area smaller than the entire nation. On the other hand, the plaintiff is not free to choose an area so commercially insignificant that any adverse effect the merger might have would be *de minimis*. See S. Rep. No. 1775, 81st Cong., 2d Sess., p. 2; *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 320 and n. 35; *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 359, n. 36. Wisconsin in this case clearly meets this threshold test. Beer is a major commodity in that State. Since 1948, Wisconsin has consistently ranked ninth among the States in total consumption of beer, annually accounting for about 3 million barrels. The federal excise tax alone on 3 million barrels of beer is $27 million (Fdg. 18, R. 462). The commercial and economic im-

merger results in a substantial increase in the share that a few firms enjoy of the sales of a particular product in a particular geographical area. Always, however, this Court has insisted, as a precondition to attaching any weight to such statistics, that the following be shown: (1) The product sold by each firm whose sales are included is in fact competitive with that sold by the others (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 326; *United States* v. *Continental Can Co.*, 378 U.S. 441, 457); (2) there are no perfect substitutes for the product (*Brown Shoe Co.* v. *United States, supra*, pp. 325–326; *United States* v. *Aluminum Co. of America*, 377 U.S. 271); (3) the merging firms compete in the territory in question (*e.g., United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357); and (4) no sellers of the product, other than those whose sales are included in measuring concentration in the area, provide a fully comparable alternative source of supply for the purchasers located there (*id.*, p. 359; *Brown Shoe Co.* v. *United States, supra*, p. 339; cf. *Tampa Elec. Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 327; *Standard Oil Co.* v. *United States*, 337

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portance of the sale of beer in Wisconsin is therefore plain, and the decisions of this Court establish the propriety of regarding States—or even single metropolitan areas—as appropriate sections of the country for Section 7 purposes. See *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 657; *United States* v. *Philadelphia National Bank*, *supra*, p. 359, n. 36; *Brown Shoe Co.* v. *United States*, *supra*, pp. 336–337; *Maryland & Va. Milk Producers Assn.* v. *United States*, 362 U.S. 458, 469. There is a substantial interest in protecting Wisconsin's consumers against substantial impairment of competition in the marketing of beer, and a merger that had such an effect could not reasonably be thought too trivial in its consequences to warrant scrutiny under Section 7.

U.S. 293, 299-300, n. 5). These conditions together define an economically meaningful market. If they are met, sales percentages can provide a rational index to the effect of the merger upon the structure of competition.

There is no contention in this case that inferences are being drawn from sales percentages as to a "product" when that "product" has perfect substitutes the sales of which are ignored. Similarly, there is no issue of relying on sales percentages to predict the probable consequences of a merger when the product is so broadly defined that it includes commodities which do not actually compete. Such problems are not raised by this case, where all are agreed that the relevant product is beer.

It is, however, necessary here to consider closely the geographical dimension of the market concept. Just as two sellers of the same product may not actually be competitors if the product is too broadly defined, so two sellers of the same product may not actually be competitors if the area in which the merger's effects are considered is too broadly drawn. *A* and *B* may sell the same product; but if *A* is located in California and *B* in New York, and high freight costs make it impracticable to ship the product long distances, the acquisition of *B* by *A* will not remove a direct competitive restraint upon the behavior of *A* and of the other sellers of the product who do business in the same area as *A*.[17]

[17] The elimination of a seller who is only a potential competitor in the territory served by another may, to be sure, remove an important restraining effect upon oligopolistic behavior and

On the other hand, simply establishing that the merging firms were direct competitors in an area does not suffice to prove that the area is a relevant market, and its sales percentages market shares upon which predictions of competitive conditions can be based with reasonable confidence. There must be good reason to believe that those selling there are the only sellers who provide significant direct competitive restraints upon the behavior in the area of the firm resulting from the merger. If other firms are able to compete in the area on equal terms with the present sellers, they, too, are direct competitive restraints upon the resulting firm. Market share figures which exclude them will therefore overstate the likelihood that the merger will produce or aggravate oligopolistic conditions.

Two contrasting examples will illustrate. Suppose that 100 firms produce and sell a product, but only two sell it in the State of Ohio. If, due to cost of transportation or other factors, these are the only sellers of the product who can practicably sell in the State, the merger will result in a monopoly, in a prac-

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support a finding of illegality under Section 7. See *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158; *Beatrice Foods Co.*, 3 Trade Reg. Rep., ¶ 17,244 (FTC); cf. *Ekco Products Co.* v. *Federal Trade Commission*, 347 F. 2d 745 (C.A. 7); *Proctor & Gamble Co.*, Trade Reg. Rep. (Transfer Binder 1963–1965), ¶ 16,673 (FTC). Or it may remove a likely potential entrant and thus significantly decrease the probable intensity of competition in the future. But the elimination of an actual competitor—a seller of the same product in the same geographic market—clearly has a more direct and immediate effect upon the structure of competition and the likelihood that oligopolistic conditions will emerge.

tical economic sense, in that area. For, so long as the resulting firm does not raise its price to a level so high that other sellers can overcome their cost handicap and sell competitively there, it need take no account of the other members of the industry; they are not a competitive restraint. Ohio thus is a meaningful market.

But suppose instead that any producer of the product in question can sell in Ohio as cheaply as any other, and it is pure happenstance that only two are at the moment active there. If so, the merger of these two firms will not create a monopoly in any meaningful sense, since, if the resulting firm raised its price even slightly over the level prevailing elsewhere in the country, its customers would immediately switch to other members of the industry—who, by hypothesis, are perfectly able to sell in Ohio at the same price at which they sell elsewhere.

In short, the fact that one or a few firms has all the sales of a particular product in a particular area does not establish monopoly or oligopoly in an antitrust sense; it does not define a condition of competition. It has competitive significance only if the sale of the product in the area constitutes a market because the purchasers there cannot readily turn to other sellers of the same product or of perfect substitutes for it. "Substantiality" in testing a merger's impact under Section 7 "can be determined only in terms of the market affected." *United States* v. *E. I. duPont de Nemours & Co.*, 353 U.S. 586, 593.

While the market as an analytic concept plays a necessary role in appraising the competitive significance of the most commonly used indicia of competitive structure—percentages of sales on an area basis—there are pitfalls in treating the concept too literally, or pushing it to unwarranted extremes. For example, suppose the cost of transporting electrical fixtures is such that no producer who does not have a plant in Oregon can profitably sell in Portland—with one exception, a producer in Kansas who, because of unusually low production costs, encounters no difficulty in shipping to and selling in Portland. Plainly he is part of the market for Portland buyers of such fixtures. Cf. *United States* v. *Bethlehem Steel Corp.,* 168 F. Supp. 576, 597–599 (S.D.N.Y.). But that does not mean the market should be expanded to include not only Oregon but also Kansas and all the States in between, on the theory that distant sellers can practicably compete in Portland. That would be unrealistic, when only one such seller is capable. The law's concern in defining an "area of effective competition" (*Standard Oil Co.* v. *United States,* 337 U.S. 293, 299–300, n. 5) is to identify all those producers of a product who can, without appreciable difficulty, compete in the section of the country in which the merger is alleged to harm the structure of competition.

The critical point, in any event, is that the definition of markets cannot be an exact science. Here, too, "the relevant economic data are both complex and elusive" and the question is not "susceptible of a ready and precise answer in most cases." *United States* v.

Philadelphia National Bank, 374 U.S. 321, 362. "The 'market', as most concepts in law or economics, cannot be measured by metes and bounds" (*Times-Picayune* v. *United States*, 345 U.S. 594, 611–612); "[i]ndustrial activities cannot be confined to trim categories" (*United States* v. *E. I. duPont de Nemours & Co.*, 351 U.S. 377, 395). Accordingly, this Court has candidly recognized that "fuzziness would seem inherent in any attempt to delineate the relevant geographical market," and that "some artificiality" may be unavoidable. *United States* v. *Philadelphia National Bank, supra*, p. 360, n. 37; cf. *United States* v. *Continental Can Co.*, 378 U.S. 441.

Within a particular area, there are bound to be a few customers who (perhaps because they are located near the periphery) have greater purchasing alternatives—a wider market—for a particular product than most. And among the sellers of that product who have not sold in the area, there are likely to be some—though precisely who and how many may be difficult to determine—for whom the economic barriers which establish the market are lower than for other outside sellers and perhaps nonexistent. Nor will it be possible, ordinarily, to estimate, except in the roughest fashion, just how great is the freedom from competition which the market confers upon those sellers who compose it as against sellers outside the market. Such uncertainties must be borne in mind in defining the legal standard for market delineation in merger cases—a question to which we now turn.

B. THE PLAINTIFF'S BURDEN OF PRODUCING EVIDENCE TO SHOW THAT AN AREA'S SALES PERCENTAGES ADEQUATELY REFLECT THE STRUCTURE OF COMPETITION IS SATISFIED BY PROOF THAT (1) THE PARTIES TO THE MERGER WERE IN DIRECT COMPETITION IN THE AREA AND (2) THOSE SELLERS OF THE PRODUCT IN QUESTION WHO DID NOT SELL THERE PROBABLY COULD NOT DO SO ON EQUAL TERMS WITH THE EXISTING SELLERS

The general propositions of market definition discussed above must be translated into a practical legal standard to define the quantum of proof that the plaintiff in a horizontal-merger case must present in order to establish that sales shares constitute shares in an economically meaningful market, and hence afford a rational basis for inferring probable competitive effects. We lay stress upon the careful formulation of a standard of market definition for two reasons. First, the Court in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, laid down a simplified test for application to merger cases like the present. The test is based upon sales percentages, and, as we have explained, such percentages do not provide a rational basis for predicting a merger's effects unless they are derived from a reasonably meaningful market.

Secondly, this Court's expressed concern with the need to develop clear and definite standards for merger cases is no less applicable in deciding what the proper market is for appraising a particular merger than in deciding the ultimate issue of what changes in the structure of the market render illegal a merger that produces them. Businessmen and their counsel can derive little concrete guidance from the principle that a merger is illegal when it produces a firm with an undue percentage share of the relevant market and

substantially increases the existing level of concentration in that market (*Philadelphia Bank*) if the standards for delineation of the market are vague—or if the lack of standards in defining the market results in allowing in the limitless range of economic evidence that the simplifying substantive principle was designed to exclude. The dangers of overbroad and undirected market determinations are especially acute in view of the inherent uncertainties in market definition mentioned earlier, which make it futile to except that in all but a few cases, an attempt at an exhaustive inquiry into the market question will produce anything more useful than a more limited inquiry.

We think there are two elements that the plaintiff in a horizontal merger case must prove to confirm that the sales percentages in a section of the country may be treated as shares of a market. The first is that sellers whose sales are included were in fact in competition with each other. If not, clearly they belong to different markets and a direct impact upon the structure of competition in the area cannot be inferred from percentage shares derived from an amalgamation of the two.

The second element is some proof that sellers who were not doing business in the area at the time of the acquisition (albeit they sold the same product elsewhere in the country) were properly excluded in figuring market shares because they faced cost or other disadvantages preventing them from competing on equal terms with the existing sellers. The plaintiff must, in other words, present evidence indicating that the existing pattern of sales in the area was not merely

fortuitous; he must present proof not only that other sellers did not sell there, but that there were economic barriers—for example, high freight costs, lack of adequate distribution facilities, settled preference for existing brands (see pp. 38–44, *infra*)—which made it difficult for them to do so.

Under this test, the plaintiff is not required to prove conclusively the existence of barriers to other sellers. Such a burden could not be met without a prohibitively time-consuming and complex inquiry into the particular costs and competitive capabilities of all the members of an industry and would ill accord with the statute's emphasis on "probabilities, not certainties." *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 323. Nor is it part of the plaintiff's burden to establish that the economic barriers relied on to define the market are of a particular height or uniformly effective in preventing entry. Be they high or even relatively low, such barriers give the sellers shielded behind them a spectrum within which they are free from effective competition. So long as a group of sellers enjoy *some* leeway to price without regard for the actions of other sellers outside the barrier, they constitute, in a practical economic sense, a market."[18]

Once the plaintiff establishes a market, the burden shifts to the defendant to show, if it can, that any adverse competitive effects of the challenged merger that the plaintiff seeks to infer from percentages of

[18] See *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 425–426 (C.A. 2); *United States* v. *Corn Products Refining Co.*, 234 Fed. 964, 976 (S.D.N.Y.).

sales in that market should be discounted because the market barriers are so low as to pose no appreciable obstacle to some, at least, of the sellers who have been placed outside it. In the *Philadelphia Bank* case, this Court partially discounted the percentages relied upon by the government to prove market shares, pointing out that the record did not reveal the exact dimensions or effectiveness of the economic barriers relied on to define the geographical market. 374 U.S., p. 364, n. 40. We think that is the proper procedure—rather than insistence upon rigorous, and unattainable, precision in market definition.

C. TESTED BY THE PROPER STANDARD, IT IS APPARENT THAT SALES OF BEER IN WISCONSIN *PRIMA FACIE* CONSTITUTE AN APPROPRIATE MARKET IN WHICH TO APPRAISE THE IMPACT OF THE MERGER OF PABST AND BLATZ

There is no disagreement with the proposition that Pabst and Blatz were direct competitors in Wisconsin at the time of the merger, where each sold a substantial amount of the beer it produced. This aspect of the market question is not in issue here. As now we show, the government also discharged its burden of a *prima facie* showing that the existing sellers have an advantage over other producers of beer in selling to Wisconsin beer consumers.[19]

1. We begin by noting four factors which, taken together, suggest persuasively that there are in fact barriers to effective competition in the sale of beer in Wisconsin by brewers not at present selling there, albeit these factors alone do not explain the nature

[19] Should the government prevail on this appeal, appellees will have an opportunity on remand to introduce their own evidence on the market as well as the other issues of the case.

and reasons for such barriers—a question we consider in the next section. The first factor is that not all members of the beer industry—indeed, not even most—sold in Wisconsin at the time of the acquisition. If there were no obstacles preventing members of the industry from competing freely in Wisconsin, one might expect that more than one-third [20] would be selling in this very important [21] beer market.

The second is that the identity of the brewers selling to Wisconsin consumers changed little over the seven-year period covered by the record in this case.[22] If the fact that not all members of the industry sell in Wisconsin were purely fortuitous, the identity of those selling there would not remain stable. Pabst and Blatz might have a substantial share of total beer sales in the State one year, but, if the market for beer were truly national, the next year—or the next—their places would probably be taken. Moreover, in a na-

[20] In 1961, 54 of the nation's 162 brewers sold in Wisconsin (Fdg. 22, R. 464).

[21] In 1961, Wisconsin ranked ninth among the States in the sale of beer and first in per capita consumption. Statement, *supra*, p. 4.

[22] In App. B, *infra*, pp. 50–51, we present in tabular form the rank and sales share by year for brewers doing business in Wisconsin for the period 1955–1961. As explained in n. 3, p. 5, *supra*, the table (based on JX 60–78, R. 198–216) excludes only those brewers that had less than one percent of total beer sales in the State; those that are included accounted in the aggregate for more than 80 percent of such sales. The table indicates no significant shifts (save those attributable to merger) in rank or market share among these sellers, and no exit or entry. The identity of these sellers—constituting a fair cross-section of beer competition in the State—showed no change in the seven-year period.

tional market (like that for locomotives, prescription drugs, or commercial aircraft) one would not expect a small group of sellers persistently to account for a much larger share of sales within a particular State than they enjoyed nationally. They could not keep this area as their private preserve, since all other members of the industry could, by hypothesis, sell there with equal facility. Hence their shares would fluctuate. Yet in Wisconsin, year after year, the same few firms, including Pabst and Blatz, have managed consistently to maintain much larger sales percentages than their national average,[23] and these substantial shares have remained generally stable (App. B, *infra*, pp. 50–51).

Third, this pattern of local concentration, rather than being limited to Wisconsin, appears to be typical of the structure of competition throughout the beer industry. Firms strong in some areas may be very weak in others and do no business at all in still others.[24] The picture that emerges is one highlighted by local or regional competition. The patronage of the beer consumers of a particular State is typically

[23] Nationally the four largest brewers accounted for about 28 percent of total beer sales in 1961, and the eight largest for 46 percent; Pabst's share was 5.83 percent. In Wisconsin, in contrast, the four largest sellers of beer in 1961 had 58.6 percent of all sales, the eight largest 76.8, and Pabst-Blatz 27.4 (Statement, *supra*, pp. 4–5, 9).

[24] For example, Blatz prior to its acquisition by Pabst sold in forty States, and between one-third and one-half of its sales were in Wisconsin and between one-half and three-fourths in Wisconsin, Illinois, and Michigan. Pabst sold in every State, but one-half of its sales were made in just four. Statement, *supra*, pp. 7–8. See, also, pp. 22–24, n. 14 *supra*.

contested by relatively few of the nation's brewers. The prevalence of this condition throughout the industry suggests that it is likely to be related to economic factors limiting the selling areas of the industry's members.

Fourth, the record of this case indicates that a beer producer often charges substantially different prices (exclusive of freight) to its distributors, depending on their location, and that such disparities are persistent; often, prices vary as between neighboring States (GX 115, 124, R. 253–259, 261–271).[25] This phenomenon, too, implies that the market for beer is not a national one. If it were, a producer could not consistently command a higher price for his brand in one area than in another; the pressure of competition would be the same everywhere he sold. Charging different prices for the same brand rarely makes business sense unless the intensity of competition varies from area to area due to economic barriers that prevent particular producers from competing with equal ease in every part of the country.

2. Confirmation that competition in the beer industry is local rather than national in structure may be found in the manner in which beer is marketed. Beer—unlike, say, paper clips or gravel—is not a

[25] For example, on January 1, 1956, Blatz was selling its "Blatz Pilsner" brand beer in 24–12 oz. returnable bottles to its distributors net (excluding freight, taxes, allowances, etc.) for $2.33 in Michigan's Upper Peninsula and $2.46 in the Lower Peninsula; for $2.16 in the neighboring State of Illinois; for as little as $1.45 in parts of Pennsylvania; and for $2.06 in Virginia. The price in Wisconsin was $2.82742. Pabst's comparable price ranged from $2.085 in St. Louis to $2.75 in parts of New Jersey.

fungible commodity in which price is the only important consideration to the buyer. Nuances of taste, and other intangible differences, figure prominently in the beer drinker's choice. Brewers therefore strive to differentiate their brands in the public's mind. Each seeks to create a distinctive and desirable image that will induce consumers to prefer his brand (or brands).[26] This requires intensive and costly advertising and promotional campaigns directed at the consumer, and the development of networks of wholesale distributors who will vigorously cultivate the market and ensure the widespread availability of the particular brand.[27]

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[26] The Chairman of Pabst stated in a deposition (R. 130):

> Well, you can only increase sales by winning more consumers to your brand. The real sales struggle is the struggle between brands of beer and everything that goes with reaching the consumer plays a part in increasing sales. You have got to secure distribution in retail outlets, in the maximum number of retail outlets. This is point No. 1. You have got to get your beer where people can buy it. Then you have got to present it through advertising of one kind and another, whether it be media advertising or whether it be what we call point-of-sale or point-of-customer advertising to call attention of the customer to the brand. You have to do all of these things. It is a many-sided process.

[27] Most sales of Blatz and Pabst are through wholesale distributors (R. 130; see, also, GX 137, R. 276, 279–280), and the record clearly documents the importance of good distributors to the successful marketing of beer and the difficulty of enlisting them (*e.g.*, GX 140, R. 284–285, GX 145, R. 292). The critical importance which the industry attaches to brand advertising and promotions is also clearly demonstrated (GX 152–153, 155–156, R. 303–319.) The record shows, for example, that in 1959 and 1960 Pabst spent about $2 per barrel for the advertising and promotion of its beer sold in Wisconsin (computed from JX 57, 58, R. 195–196; GX 134, 136, R. 273, 275).

As a result of the industry's emphasis upon brand differentiation as a marketing tool, it seems clear that a seller who is established in a particular area has an inherent advantage over one who has not previously sold there, though their roles may be reversed in another area. An example will illustrate. Suppose *A* is a major brewer, but he has confined his selling efforts to the eastern seaboard. He has blanketed the area with advertising, promotions, and a network of distributors, and his brand is popular and widely sold. But in the midwest, his brand is unknown. He has never advertised, does not attempt to sell, and has no distributors there. Should he, nevertheless, be deemed an actual competitor [18] in the midwest, and his sales volume included in computing the market shares of those producers who do sell in the midwest? Surely not. He is not part of the midwest market, for he could not begin to compete effectively against the strongly entrenched firms there without undertaking elaborate, costly, and time-consuming measures to establish brand acceptance in that area." Cf. *American Tobacco Co.* v. *United States*, 328 U.S. 781, 797.

Such is the situation in Wisconsin. Those who sell beer there are able to do so by virtue of having culti-

[18] As mentioned earlier (pp. 27–28, n. 17, *supra*), such a firm might, under some circumstance, be an important potential competitor, the threat of whose entry could exercise some restraining influence on the prices of the sellers in the market—albeit less than that of a firm actually in the market.

[19] A leading student of the subject has concluded that brand allegiance is probably "the most important barrier to entry" into markets. Bain, *Barriers to New Competition* (1956), p. 216.

vated a consumer desire for their brands in preference to others through years of advertising and promotions, and through the efforts of their distributors. The high degree of consumer acceptance they enjoy is graphically attested by Pabst's action in charging a higher price for Blatz brand beer after the acquisition than it charged for this brand in any other State (R. 431). Pabst's ability to do so indicates that Blatz, and no doubt the other market leaders in Wisconsin as well, enjoyed a protected market position by reason of their great popularity with the Wisconsin consumer. A producer of beer who sold no beer in Wisconsin and whose brand consequently was unknown in the State could not compete on equal terms with the existing sellers (even if transportation costs were not a factor, a question we consider next), due to the absence of any consumer demand for his brand. This would seem the most likely explanation why the sale of beer in Wisconsin has been persistently dominated by a few firms having stable sales shares. They are the firms whose brands are well known in the State, and who for that reason enjoy a competitive advantage that has discouraged entry by other brewers.

In so arguing, we assume of course that the barrier of brand differentiation runs—allowing for some unavoidable peripheral fuzziness—along the boundaries of the State of Wisconsin, so that a brewer who is well entrenched in a neighboring State could not readily shift his sales to Wisconsin. The record supports this assumption. Advertising and promotional campaigns are planned and conducted, and distribu-

tional networks organized, largely on a State or local basis (GX 137, R. 276–280; GX 140, R. 283–285; GX 141, R. 287; GX 142, R. 289; GX 145, R. 294; GX 153, R. 305–310; GX 156, R. 316).[30] A brand well known in one State might, therefore, be little known in an adjacent State; an excellent system of wholesale and retail distribution in one State might be of no help at all in achieving wide distribution and promotion of the brand in any other State. This is corroborated by the stable market shares in Wisconsin, and by the fact that brands normally were sold at the same price throughout each State but at different prices even as between neighboring States. It is therefore a valid inference that those who are established in Wisconsin enjoy an advantage over any other brewers, even those who might be doing business in the surrounding areas.

In addition to the barriers created by brand differentiation, sellers who do not supply the Wisconsin area in many cases almost certainly face substantial barriers in the form of transportation costs. Cf. *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 259 F. 2d 524, 529 (C.A. 2). It is true that the record in this case contains no direct evidence of such costs,[31] but since beer is a heavy, rela-

[30] One reason for this is that the States elaborately regulate the marketing of beer. A promotional or advertising campaign legal in some States might be illegal in others. This pattern of regulation tends to compel brewers to plan and operate such campaigns on a State-by-State basis (GX 142, 144, R. 289–291; GX 147, 148, 150, R. 298–302).

[31] However, we note that in *Anheuser-Busch, Inc.*, 54 F.T.C. 277, 297, the Federal Trade Commission in 1957 found that

tively low-priced commodity, frequently shipped in bottles, freight costs must be an important element in total cost and they would of course increase in proportion to the distance between the brewery and the point of sale. That they in fact impose a barrier to the sale of beer in distant markets is strongly suggested by the fact—well documented in this record (Statement, *supra*, pp. 5–8)—that most beer sales by producers are made within the immediate areas of their breweries. Ninety percent of all beer sold in Wisconsin comes either from breweries actually located within the State or from Hamm's brewery just across the border in Minnesota, and this pattern holds across the nation.[32]

"[i]n the beer industry there is a wide dispersal of manufacturing facilities due mainly to high shipping costs relative to unit value. Thus, there is found throughout the country many beers of local or regional geographic distribution." See, also, 54 F.T.C. at 279 (examiner's findings). The Commission's order was eventually vacated on judicial review, 289 F. 2d 835 (C.A. 7), but this particular finding was not disturbed. See 289 F. 2d at 838.

[32] It is true that freight cost is presumably not an obstacle to competition by those firms that have breweries in Wisconsin but sell the bulk of their production elsewhere, Wisconsin being a surplus beer-producing State. But even if such production was included in delimiting the market, Pabst's and Blatz' market shares would not be substantially changed, since they, too, were substantial surplus producers in Wisconsin. Moreover, a producer located in Wisconsin but having his market elsewhere would still find it difficult to sell in Wisconsin in view of the barriers created by brand allegiance—our primary ground for arguing that the existing sellers in Wisconsin constitute a meaningful economic market. In delimiting the relevant market here, we have of course included all brewers who sold in Wisconsin regardless of whether they had a brewery there. As we

Moreover, there is evidence that brewers consider it important for effective distribution that they have breweries proximate to their important markets (GX 109, R. 249; GX 145, R. 296).

We think the foregoing facts suffice to establish *prima facie* that the group of sellers who at the time of the acquisition were actually selling in Wisconsin constitute a proper market for purposes of this case, and that their relative sales volumes in the State furnish a reliable index to the structure of competition in this economically important area of beer consumption.[35] The pattern of selling that holds throughout the industry, and the economics of beer marketing, indicate persuasively that these sellers had advantages

---

have just noted, a brewer's market (where his customers are located) may not be the same as his place of production.

[35] If so, then for the reasons stated in part I of our argument it is apparent that the challenged acquisition is *prima facie* illegal.

We note here the possible argument that any seller capable of selling in Wisconsin—as manifested by the fact that he does sell there—is capable of selling *all* his output in Wisconsin and that accordingly a proper test of the merger's effect would require a comparison between the total production of Pabst-Blatz and the total production of all 54 brewers who sold in Wisconsin, subject to adjustment for multi-plant brewers, some of whose plants may be too distant to permit shipment into Wisconsin, due to freight costs. The record permits no such comparison; and it is doubtful how useful it would be. For there are surely limits beyond which a seller in Wisconsin could not substantially increase his market share without costly expansion of his distribution methods and substantially increased investment in advertising and promotions, as suggested by the remarkable stability of market shares in Wisconsin over time.

over other sellers of beer which insulated them (albeit not absolutely) from fully effective competition by such outsiders.[34]

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[34] The same reasoning we have applied to the Wisconsin market also compels the conclusion that the district court erred in rejecting the three-State area of Wisconsin, Illinois, and Michigan as a relevant market. As this Court has made clear, within a geographic market there may be submarkets that are equally valid for Section 7 purposes. *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 336. Pabst and Blatz were not only strong contenders for the patronage of beer drinkers in Wisconsin; they were strongly entrenched throughout the three-State area of which Wisconsin is a part. This broader area, too, was one where both firms were in heavy competition at the time of the merger and where—given the nature of beer marketing—brewers who did not sell in the area would have found it difficult to penetrate without major efforts and expense.

There is no inherent reason for focusing inquiry upon a State or group of States, as opposed to a region within a State, or a region that cuts across State boundaries rather than follows them. Nor do we suggest that State boundaries necessarily have intrinsic commercial significance. At least in this case, however, there are strong reasons for centering attention upon States and especially Wisconsin. First, States are areas for which relevant market statistics are most likely to be available—especially in the case of a product, such as beer, which is subject to extensive State taxation and regulation. Second, businesses frequently organize their operations on a State-by-State basis, and the record shows this to be true in this case. This has special relevance here, since advertising and distributional policies—conducted on a State-by-State basis (see pp. 41–42, *supra*)—are at the heart of the most important economic barriers defining relevant markets in the beer industry. Pabst, for example, adopted a separate pricing policy in each State, and while in some cases a uniform price prevailed throughout a multi-State area, it was more common for the price to vary even as between neighboring States (GX 115, R. 253). Significantly, moreover, the State of Wisconsin was singled out for special treatment; as mentioned earlier,

We do not suggest that the market we have demarcated is perfect; no market is. The only question is its *prima facie* validity as a basis for application of the legal standard of *Philadelphia Bank*. This much, surely, has been demonstrated. The government's evidence established the strong probability that those who have a market in Wisconsin—brewers who sold there at the time of the acquisition—are not (within limits of course) subject to significant competition in that market from most other brewers. They have an entrenched position giving them an appreciable cost advantage over such outsiders. Since there thus appears to be an area within which prices charged, and other business moves made, by the Wisconsin sellers are free from significant constraint by other members of the industry, the policy of the antitrust laws requires that the conditions of effective competition among the brewers who sell in Wisconsin not be impaired by merger.

Pabst sold its newly acquired Blatz product at a higher price in that State than in any other. Thus, while there may be other submarkets for testing this merger, Wisconsin is a particularly appropriate one.

CONCLUSION

The judgment of the district court should be reversed, and the case remanded for further proceedings.

Respectfully submitted.

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MARCH 1966.

APPENDIX A

The exhibits in this case were offered and admitted in evidence at the following pages of the transcript of proceedings in the district court:

Transcript of 1-27-64

Exhibit:	Page
JX 1-100	61
GX 105-110	62-65
GX 115-118	74-75
GX 124-125	76-77
GX 133-136	109-110
GX 137	[1] 110
GX 140-156	116

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Exhibit:	Page
GX 157-185	214
GX 186-191	159-163
GX 192A-215	170-186
GX 216-236	187
GX 245-266	143-158
GX 267	200-201

[1] Admitted at p. 214 of the transcript of 1-28-64.

APPENDIX B

STATE OF WISCONSIN

Sales of beer (barrels) by companies with 1 percent or more of the volume of sales per annum

Company and location of brewery	Y=in Wisconsin; O=outside Wisconsin	1955		1956		1957		1958		1959		1960		1961	
		Rank	Market share (percent)	Rank	Market share (percent)	Rank	Market share (percent)	Rank	Market share (percent)	Rank	Market share (percent)	Rank	Market share (percent)	Rank	Market share (percent)
Blatz: Milwaukee, Wis	Y	1	14.01	1	12.72	1	12.81	1	12.99	(1)	(1)	(1)	(1)	(1)	(1)
Schlitz: Milwaukee, Wis	Y	2	11.54	2	11.73	3	11.64	3	11.32	3	11.25	3	10.98	3	10.88
Pabst: Milwaukee, Wis	Y	3	10.51	4	10.86	4	11.14	4	10.73	1	24.80	1	26.14	1	27.41
Hamm's: St. Paul, Minn	O	4	8.09	3	11.01	2	12.15	2	12.45	2	12.24	2	12.34	2	11.97
Miller: Milwaukee, Wis	Y	5	7.04	5	6.29	5	5.81	5	5.21	6	4.49	6	4.35	4	[2]8.36
Heileman: La Crosse, Wis	Y	6	5.65	6	5.08	7	4.00	8	3.82	7	3.96	4	8.28	5	[2]8.17
Kingsbury: Sheboygan, Wis	Y	7	3.36	7	3.86	6	4.36	6	4.77	5	4.60	(1)	(1)	(1)	(1)
Gettelman: Milwaukee, Wis	Y	8	3.07	8	3.21	9	2.78	9	3.36	8	3.60	7	3.60	(1)	(1)
Anheuser-Busch: St. Louis, Mo	O	9	2.58	9	2.76	8	3.14	7	3.86	4	4.80	5	5.56	6	5.72
Leinenkugel: Chippewa Falls, Wis	Y	10	2.34	10	2.28	10	2.30	10	2.32	9	2.31	8	2.22	7	2.16
Ind.-Milwaukee: Milwaukee, Wis	Y	11	1.85	11	1.89	11	1.92	12	1.88	14	1.82	11	1.70	11	1.52
Weber-Waukesha: Theresa, Wis	Y	12	1.82	12	1.86	15	1.69	15	1.23	(1)	(1)	(1)	(1)	(1)	[3](1)
Oshkosh: Oshkosh, Wis	Y	13	1.75	13	1.74	13	1.77	13	1.83	12	1.85	12	1.66	10	1.55
Drewry's		14	1.50	14	1.62	12	1.80	11	2.02	11	2.10	9	2.13	8	2.13
Chicago, Ill	O														
South Bend, Ind	O														

Oconto: Oconto, Wis.	Y	[1] 15	1.43	15	1.56	14	1.70	14	1.82	13	1.85	13	1.65	12	1.29
Stevens Point: Stevens Point, Wis.	Y	16	1.27	17	1.32	16	1.28	17	1.21	18	1.14	17	1.10	14	1.07
Walter (Appleton): Appleton, Wis.	Y	17	1.25	19	1.15	19	1.15	18	1.19	17	1.22	14	1.21	13	1.16
West Bend: West Bend, Wis.	Y	18	1.20	18	1.17	21	1.12	22	1.04	20	1.03	20	.94	20	.84
Peoples (Oshkosh): Oshkosh, Wis.	Y	19	1.13	20	1.12	22	1.09	21	1.07	19	1.05	19	1.01	19	.96
Walter (Eau Claire): Eau Claire, Wis.	Y	20	1.06	22	1.04	23	1.01	23	1.02	21	1.00	18	1.06	15	1.06
Bohemian		21	1.05	24	1.00	24	.92	24	.90	23	.84	22	.82	[5] 21	[5] .83
Boise, Idaho	O														
Chicago, Ill.	O														
Spokane, Wash.	O														
Rahr-Green Bay: Green Bay, Wis.	Y	22	1.02	21	1.06	20	1.14	19	1.15	15	1.26	15	1.20	17	.98
Fox Head: Waukesha, Wis.	Y	24	.89	16	1.35	17	1.24	20	1.14	10	2.12	10	1.94	9	[3] 2.11
Fauerbach: Madison, Wis.	Y	23	.95	23	1.02	18	1.16	16	1.22	16	1.23	16	1.16	16	1.04

[1] Acquired by Pabst and included in Pabst share.

[2] Miller acquired Gettelman in January 1961. *The Wall Street Journal* (Midwest edition), January 16, 1961, p. 14.

[3] Heilman acquired Kingsbury in January 1900 and Fox Head in July 1962. *Moody's Industrial Manual*, 1963, p. 767. Weber-Waukesha had previously been acquired by Fox Head. *Modern Brewery Age Blue Book*, March 1961, p. 131.

[4] Not listed.

[5] Bohemian was acquired by Atlantic Brewing Co. *Modern Brewery Age Blue Book*, March 1961, p. 124.

Source: JX 60-78, R. 198-216.

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MISCELLANEOUS:

Senate Report No. 1775, 81st Cong., 2d Session 35, 36

House Report No. 1191, 81st Cong., 1st Session 35, 36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES, *Appellant,*

v.

PABST BREWING CO., ET AL., *Appellees.*

Appeal From the United States District Court for the Eastern District of Wisconsin

---

MOTION FOR LEAVE TO FILE BRIEF, AMICUS CURIAE

Comes now the Brewers' Association of America, an Illinois non-profit corporation, by counsel, Thomas E. O'Neill, and moves the Court for leave to file a brief *amicus curiae* in these proceedings. Appellees Schenley Industries, Inc., The Val Corporation, and the Pabst Brewing Company, through counsel, have refused to consent to the filing of this brief. The United States has given such consent.

INTEREST OF AMICUS CURIAE

The Brewers' Association of America[1] is a national trade association of the brewing industry which numbers within its membership as of its last meeting, 89 of the individual brewing companies throughout the United States. The Brewers' Association of America represents the interest of the smaller brewers of the nation whose individual fates are at stake in the outcome of this case. The Board of Directors of the Association, by unanimous vote, has instructed counsel to file the attached *amicus* brief in these proceedings.

Perhaps most affected by this decision will be the operation of the brewers within the State of Wisconsin. There are presently 26 brewing companies in this State. Twenty of these breweries are members of the Brewers' Association of America. These twenty brewers in Wisconsin have been directly affected by the merger of Pabst and Blatz and have a vital stake in the outcome of this litigation; and the Brewers' Association of America submits that the interests of these brewers and other small brewers throughout the nation are not directly represented by the government.

WHEREFORE, the Brewers' Association of America respectfully moves the Court for leave to file a brief *amicus curiae*.

Respectfully submitted,

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[1] A list of the member brewers as of October 1965 appears in the Appendix as Exhibit 1.

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---

BRIEF AMICUS CURIAE

STATEMENT OF THE CASE

On July 30, 1958, the Pabst Brewing Company acquired the Blatz Brewing Company from Schenley Industries, Inc. On October 1, 1959, the United States filed a complaint in the United States District Court for the Eastern District of Wisconsin charging that this acquisition violated Section 7 of the Clayton Act, as amended, because its effect might be substantially to lessen competition or tend to create a monopoly in the production and sale of beer. The complaint

charged that such lessening of competition occurred in three basic markets: (1) the United States as a whole, (2) the State of Wisconsin, and (3) the three-state area of Wisconsin, Illinois, and Michigan.

After a lengthy pretrial discovery procedure, the trial began in the District Court before Judge Robert E. Tehan on January 27, 1964. The government elected to prove its case by the offering of Exhibits and portions of depositions. The government rested its case on January 28, 1964, after some 260 Exhibits had been placed in evidence. The defendants filed a Motion to Dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Briefs were filed and a hearing was held on this motion on April 30, 1964. The Court granted the motion of the defendant for Dismissal pursuant to Rule 41(b) in an opinion dated September 22, 1964, and final judgment was entered on October 13, 1964.

On December 11, 1964, a Notice of Appeal to the Supreme Court of the United States was filed in the United States District Court for the Eastern District of Wisconsin.

On November 8, 1965, the Supreme Court considered the Jurisdictional Statement in this case and noted probable jurisdiction.

QUESTIONS PRESENTED

The basic question is whether the District Court erred in granting defendant's Motion under Rule 41(b) of the Federal Rules of Civil Procedure, on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. This raises several

ancillary questions concerning the contested issues of this case which are:

(1) Are the States of Wisconsin, Illinois, and Michigan a "section of the country" within the meaning of Section 7 of the Clayton Act, as amended, regarding the sale of the product beer?

(2) Is the State of Wisconsin a "section of the country" within the meaning of Section 7 of the Clayton Act, as amended, regarding the sale of the product beer?

(3) Did the merger of Pabst and Blatz have the tendency and capacity "substantially to lessen competition or tend to create a monopoly" in the sale of the product beer, in the United States as a whole, in the three-state area and in the State of Wisconsin?

SUMMARY OF ARGUMENT

1. The Brewing Industry is, by Its Nature, Local in Its Scope

The history of the brewing industry in America is one founded on local competition. The small brewers of the nation have dwindled from 725 operating brewers after the repeal of Prohibition, until today there are less than 180 breweries left in business. Because brewing in the United States started as a local industry, in individual cities throughout the country, the competition in the brewing industry still remains local by nature. Although today the largest brewers of the nation are said to be national, their distribution and sales are geared to a local level.

2. Competitive Problems of the Small Brewer

The small brewer has problems of distribution because of his localized operation. The bulk of his sales are made close to the brewery. When the small brewer

operates outside the area near the brewery he is perhaps least effective. The larger brewers have procured the most efficient of the independent distributors, and in many instances, operate systems of distribution of their own.

In the field of advertising, the small brewer just doesn't have the money to compete with the larger brewers in the country.

3. Ease of Entry to the Brewing Business

One of the best indicators available to determine the difficulty of competition is the test of "ease of entry" into the industry. There is absolutely no possibility of a new firm entering the brewing industry. No new venture in the beer business has been successful in over 15 years.

4. The Sales Gains of the Larger Brewers Have Been at the Expense of the Smaller Brewers

The market shares of the larger brewers in the nation have continued to increase, and most particularly, the market share of Pabst, since the acquisition of Blatz, has continued to increase in great strides. All large brewers appear to be prospering while the *vast majority of small brewers seem to be in near failing condition with declining sales in each and every year.* In 1957, the top ten brewers of the country sold 45.06 per cent of the beer. This was the year before the merger of Pabst and Blatz. In 1965, the top ten companies sold 60.85 per cent of the beer in the nation. Regarding the sales of the top 25 brewers, these firms controlled 68.99 per cent of the market in 1957, and in 1965 controlled 87.90 per cent. Thus, today, the market share of all the small brewers in the nation is only 12.10 per cent of all the beer sold nationally.

5. The Pabst Brewing Company Is a Dominant Competitor in the National Market

The Pabst Brewing Company, since the merger, has advanced to third place in the national rankings, with a present total of about 8.2 per cent of all the beer sold nationally. The company has almost doubled its market share in the nation as a whole in the six years since the merger. In addition to sales gains, the company has continued to show increasing profits. Its 1965 sales income was up 39 per cent over 1961. Perhaps most important in the financial picture is the fact that the company can now boast of "cash and marketable securities" in the amount of $35.2 million. *This is enough to go out into the marketplace and purchase another big brewery.*

6. The Acquisition Has Particularly Affected the Status of Competition in Wisconsin

The Pabst Brewing Company had the 4th largest selling beer in Wisconsin before the merger. It purchased the brewer selling the most popular brand of beer in Wisconsin, Blatz. After the merger the combination sold twice as much beer as its nearest competitor, Hamm Brewing Company. By 1961, Pabst and Blatz had increased their shares of the market and enjoyed 27.41 per cent of the Wisconsin beer business. By 1965, the company had gained additional ground until it now controls 32.02 per cent of all the beer sold in Wisconsin. *During the time that the Pabst Company enjoyed such phenomenal success, the small brewers of Wisconsin suffered an average decline of nearly 23 per cent in the period from 1961 to 1965.* The sales of these same Wisconsin brewers are, in the main, limited to the State of Wisconsin, as 16 of the 28 brewers left in the state do the principal volume of their

business intrastate. Accordingly, the Wisconsin sales of Pabst and Blatz are most definitely the major factor in the diminishing share of the local brewers in the sale of beer in Wisconsin, since the Pabst-Blatz brands are the largest sellers, and the biggest competitors for the small brewers.

7. The Merger of Pabst and Blatz Has Affected the Status of Competition in Michigan

The Pabst-Blatz combination, in the years since the merger, has increased its percentage share of the market in Michigan. Before the merger, Blatz was the sixth largest selling beer in Michigan. After the merger, the Pabst-Blatz brands became the second largest sellers within the state, with 12.7 per cent of the market. They jumped into first place in 1963, and remain there today with 28.58 per cent of beer sales in Michigan being shared by Pabst and Blatz. From 1961 to 1965, the percentage share of the Michigan market of the Pabst and Blatz brands jumped from 15.96 per cent to 28.58 per cent. Meanwhile, the sales of the local brewers within the state continued to decline. Likewise, the number of small firms doing business in Michigan has declined by 37 per cent in the short period from 1961 to 1965.

8. The Competitive Situation in Illinois

Even though statistics are unavailable for Illinois beer sales, it appears that half of the brewers in that state have gone out of business since 1957. Accordingly, there is no hope of saving the small brewers of Illinois. They are already gone, but meantime the sales of Pabst and Blatz continue to increase.

9. The Applicable Law of the Situation Would Prohibit This Merger

Section 7 of the Clayton Act forbids a merger in any "section of the country," where the effect may be substantially to lessen competition or tend to create a monopoly. The cases and the legislative history of this Act clearly show that the merger of Pabst and Blatz was in violation of this law.

ARGUMENT

1. THE BREWING INDUSTRY IS, BY NATURE, LOCAL IN ITS SCOPE

Before considering the questions raised by this appeal it is necessary to briefly consider the past and present history and status of beer competition within the United States. It will be among the smaller brewers where the decision of this Court will have its greatest impact.

The small brewers of the nation compete locally, and essentially intrastate. Historically, the establishment of small breweries throughout the country was like the founding of a bakery, to bake bread for a town, or like the location of a dairy, to supply milk for the locality. Like bread and milk, beer is a perishable commodity. When unpasteurized, it quite resembles milk as it is subject to spoilage, and must be kept under refrigeration.

At the turn of the century every town had its local brewery which sold beer to the taverns, restaurants, and homes within the town. Beer was delivered much like bread and milk. A few of the brewers, even as early as 1900, had turned to distribution outside of the town in which the brewery was located, but there were no national breweries, as we know the term today, for pasteurization was not totally effective, and the

modern bottle cap had not even been invented. Thus, the bulk of any brewers' beer which went to another town went by ice-laden railroad car. However, the real growth of the national brewers did not start until after the "noble experiment" failed.

In 1934, after the repeal of the 18th Amendment, there were 725 breweries operating within the United States. By 1940, this number had stabilized somewhat and there were then 580 in business. In 1945, 461 brewers were operating, and in 1950, 392 were licensed to operate. In 1955, 285 breweries were licensed to operate, and in 1958, the year of the merger, 243 were operating within the country. In the eight years since the merger of these two companies there has been a dramatic decrease until now, fewer than 180 brewing companies are operating within the United States.

Back in 1934, only 25 per cent of the beer sold was in bottles, the rest was draught beer, which was distributed locally and the bulk of it by small brewers.

With the development of packaging techniques, beer became available away from the place where it was brewed, and the concept of the national shipping brewer was born. Certain brewers with foresight and resources began expanding their markets outside their customary geographical area by shipping keg beer, or packaged beer, to distant markets.

However, the vast majority of brewers in the post-prohibition era continued in the methods of their founders, to service the towns and localities which were close to the location of their plants.

Many smaller brewers found that they were "in the way" as larger "shipping brewers" expanded their

markets. These larger brewers came into smaller brewers' markets and took over a share of the local market. Hundreds of local breweries, as a result, were forced out of business. Others soon found that they had to find some additional market for their beer or face the alternative of closing the brewery.

They reached out, in a small way, for markets at some distance from the plant where they could sell a portion of their beer. Thus the "local shipping brewer" was born. This situation created what might be called the technique of defensive shipping. That is to say, not shipping into another area because a brewer wanted increased market coverage, but shipping in because he wished to utilize idle productive and labor capacity. With some seven hundred brewers in business at one time the necessity of limited shipments to various areas by all brewers, out of their customary trading areas, precipitated eventually a multiplicity of brands in many markets. *Yet, the average brewer had entered interstate commerce on but a token scale.* The bulk of his business, as well as the bulk of the larger brewers' business during the thirties, was in the geographical area where the Brewery was located.[2]

Today, in 1966 this historical development of competition in the brewing industry, at the local level,

[2] The fact that the average brewer was essentially localized was recognized at the time of "repeal" when the Federal Alcohol Administration Act was enacted. Due to the fact that beer business at that time was essentially an intrastate operation, the Federal Alcohol Administration Act of 1935, 49 Stat. 977, provided that brewers, unlike distillers, could operate without Federal basic permits, and that their labeling and advertising practices were outside of Federal jurisdiction, except to the extent that the laws of the various states imposed labeling and advertising restriction similar to those prescribed by Federal regulation.

remains an important consideration. Although the larger brewers are irretrievably in the stream of interstate commerce, *the local brewers, with whom the national brewers are competing, are not in interstate commerce as regards the major proportion of their business.* Small brewers, in the main, have remained local operators, serving the geographical area closest to their individual plants.

Since the majority of brewers are small brewers, the competition in the brewing industry is geared to local levels. As one moves from state to state, or even from city to city, the brands in the marketplace are different. The brewers themselves are different. The distributors are different. The laws of the states are different regarding the conditions and methods of sale, and the outlets where beer is available for sale, in many instances, are likewise different.

Competition in the beer business is vastly dissimilar from the national competition which exists in industries such as steel, aluminum, automobiles, electrical appliances, television, et cetera.

Go to any city in any state and you will find the same national names in these categories represented in the marketplace. Perhaps the leaders in one area will not be the leaders in another, but at least they will all be represented.

In the beer industry, even certain national leaders in the sale of beer are often merely local operators on a large scale. For instance, sales of Rheingold beer in 1965 amounted to over 4 million barrels, yet the operations of the Company were largely restricted to an area surrounding New York City. Similarly, the sales of Schaefer beer, the sixth largest selling brand in the

nation, were restricted to the New York area. Likewise, Lone Star and Pearl beers are sold only in Texas and the surrounding states, and Olympia beer is sold only in the northwest. These beer brands are mentioned because they are so-called national leaders.

Yet all brewers, whether they be national, regional, or local, compete, in the final analysis, at the local level.

Defendants below have argued that the only area of significant competition within the brewing industry is the nation as a whole. Considering the history of the brewing industry, the areas of competition, and the number of competitors, this is patently false. Competition in the brewing industry is essentially localized. The smaller brewers, it is true, have been eliminated from certain areas of local "effective competition" by the merger activities of larger brewers, by their pricing practices, or by market pressures. As a result, the areas of "effective competition" with the brewing industry have been widening. However, *such areas have not widened to the point of considering the nation as a whole as the lowest common denominator of significant competition* within the industry.

Generally speaking, the smaller the brewer's production, the smaller his area of competition will be. The protection of local competition remains of extreme economic significance to small brewers where the business of such small brewers is conducted in one city, in a group of counties, or, as the case may be, in one state or in two or three states. For the brewer and those who join him in competition in such a restricted area, it becomes, most certainly, not only an area of *effective competition,* but the *sole* area of competition.

Small brewers who deal in limited segments of the marketplace are completely unconcerned about competitive conditions on the national level, of industry shares on the national level, or with competition in other states where they do not do business. Such brewers are interested only in the competitive conditions where they sell their beer.

2. COMPETITIVE PROBLEMS OF THE BREWER

A. Distribution

There is a basic difference between the distribution of Pabst, Blatz, and the other widely distributed beers, and the distribution of local, small brewers' beers. In most instances, about 80 per cent of a local brewer's sales are made in an area about one hundred miles from the brewery. Within this area the small brewer almost always handles his own distribution. Beyond the area serviced by the brewer's own personnel, he is forced to distribute his beer through independent wholesalers, or else sell direct to retailers. Usually his distribution outside the principal trading area is ineffective, and prone to attack by his competitors.

The national brewers utilize independent wholesalers, but they also have distributorships which are owned by the brewing company. The record at page 242 regarding answers to government interrogatories shows that five wholesale corporations were owned by Pabst.

At page 130 of the record, portions of the deposition of Mr. Harris Perlstein are of interest:

> Q. "What percentage of the sales of Pabst Blue Ribbon beer was made before the acquisition of Blatz through distributors?"
>
> A. "Oh, probably, and this is approximate, eighty per cent."

and further,

> Q. "What percentage of the distribution of Blatz beer since the acquisition has been through wholesalers and distributors?"
>
> A. "If you will keep in mind that these are approximations on my part I would say 75 to 80 percent."

The testimony of Mr. Perlstein on this point of distribution is indicative of the amount of most larger brewers' beer which is sold through distributors or wholesalers, rather than directly.

However, for the average small brewer, the proportions are perhaps reversed. In most instances, the average small brewer distributes about 80 per cent of the beer from his plant through his own sales force. The other 20 per cent or less is sold through wholesalers or distributors. Where the small brewer may have gained a valuable wholesaler for his beer, he often lives in fear lest one of the large brewers might pirate this distributor from him.

There is constant coercion on the part of the larger brewers, operating outside the geographical area of their plant, to secure efficient distributors. On this point the testimony of Mr. Le Roy Payne of the now defunct E&B Brewing Co. of Detroit, Michigan, is most interesting:[3]

> "Here are the most important reasons for our sales decline: One, loss of distributors and a gradual constriction of the sales area where the product is sold. During the past three years the number of distributors handling the products of this com-

[3] Hearings before Subcommittee on Ways and Means, 84th Congress, Second Session, page 813.

pany have been reduced approximately 40 percent. Representatives of the larger companies consistently approach our distributors . . . After a number of visits by the salesman, the distributor usually puts in the brand of the larger company. Practically every time the larger company increases its budget for a short time, puts in a large selling organization, and then suggests to the distributor to *discontinue a competitive price brand; namely, our brand.* Thus the smaller brewery loses distribution and sale of its products in an area where it has spent considerable money to secure and to service." [Italics supplied.]

B. Advertising

Because the ultimate purchaser of beer is a local individual and because the smaller brewers have operated, and still continue to operate locally, the advertising of all brewers, whether national, regional, or local, must be geared to the local level. Even though larger brewers use what may be termed national advertising, the same is geared to local markets, whether it be by television, newspaper, radio, or point of purchase.

Since the merger of Pabst and Blatz, the company has grown currently to be the nation's third largest brewer. The combination has the power to put any one of the smaller brewers out of business within a matter of months, should the Pabst Company embark on a concerted marketing and advertising effort within a small brewer's local area.

The advertising budget of the Pabst Brewing Company for 1964 was approximately 15.9 million dollars, according to *Advertising Age*. This figure is $1,700,000 above the estimated $14.2 million spent for advertising of the Pabst and Blatz brands in 1963. In 1964 this

amount was exceeded only by the expenditures of the two largest brewers, Anheuser-Busch and Schlitz.

Each year the weekly magazine, *Advertising Age* publishes the advertising expenditures for leading brands of beer and ale. Last year these *Advertising Age* figures for 1964 showed that Pabst spent $1.29 per barrel for advertising in newspapers, magazines, and television. *This does not include any expenditure for point of sale, radio, or outdoor advertising.*

The Pabst advertising expenditures were somewhat less than the $1.59 per barrel, which Anheuser-Busch spent in these media during 1964, and the $2.22 per barrel spent by Schlitz. Most of the larger brewers spent over one dollar per barrel in these measured media; but this is only a portion of the story. At least *double this amount is spent by all the major brewers in so-called unmeasured media,* particularly in point of purchase.

Before the merger of Pabst and Blatz the amount spent for advertising was less for both individual companies and as a total. But before the merger, the dollars spent in the advertising of Pabst and Blatz brands was not spent in concert, as is the situation at the present time. Previous to the merger, the Pabst brand and the Blatz brand were actively competing for the public dollar.

As an example of this, before the merger of these two brewers, the Blatz brand had traditionally been Milwaukee's most popular brand of beer. Now, according to *Advertising Age,* Pabst in 1965 topped Blatz as Milwaukee's number one beer after 15 consecutive years when Blatz held this position. According to the *Milwaukee Journal's* 43rd Annual Consumer Survey,

21 per cent of the Milwaukee bottled beer buyers now favor Pabst, with 18 per cent purchasing Blatz over the other brands in that market. This is a reversal of the 1964 figure when 18 per cent of the purchasers favored Blatz and 16 per cent purchased Pabst beer. It is submitted that this did not take place by accident, but rather by design. The merged corporations can now juggle the market emphasis to favor the greater designs of the parent company.

The small brewer, as a local operator, cannot afford to compete with the all-out efforts of the larger brewer. Take, for instance, the efforts of Pabst in developing a market, where previously the company did not have significant market penetration.

Page 305 of the record indicates the effort which Pabst made back in 1957 toward developing the Washington, D. C. market. On the following pages it is noted that in Washington, D. C. alone, 300 Pabst clocks were to be placed at a cost of $60.00 each, six female models were to be furnished, and 300 barbecue sets were to be supplied at a cost of $60 each. In addition, $15,000 worth of radio spot advertising was to be contracted for, and $10,000 worth of newspaper advertising.

This is a typical market effort for many brewers engaged in national sales, when entering a local market.

What of the efforts of a smaller brewer in a market like Washington, D. C.? The smaller brewer generally transports a large truck filled with bottled or canned beer to town and deals with the distributor, or the individual liquor store on a personal basis, usually stressing only the price advantages of his product. No radio spots are furnished. No newspaper advertising is in-

serted. No models are hired. No barbecue sets, and no clocks are supplied. The small brewer just doesn't have the money to spend in his own local market, let alone distant markets.

Before concluding the subject of advertising and promotion activities, a glimpse into the advertising activities of the small brewer within his local market would be pertinent.

In 1964 a questionnaire was mailed to members of the Brewers' Association of America. Typical of the response was that from the fifteen small brewers in Wisconsin who reported concerning their individual advertising expenditures. The average of these fifteen brewers was $1.03 per barrel, with a high of $2.34 and a low of 26¢ per barrel. However, *the total amount spent on advertising by all these fifteen small Wisconsin brewers only amounted to $430,634 for an average advertising expenditure of $28,700 per brewer. The record at page 273 shows that the Pabst Brewing Company alone in 1960 spent $779,472 in advertising in Wisconsin.*

As far as profit and loss are concerned, five of these fifteen Wisconsin brewers showed a net loss on their operations, ranging from a high $18,850 to a low of $5,006. Profits among the remaining ten brewers were meagre, from a high of $87,944 down to only $5,000.

3. EASE OF ENTRY INTO THE BREWING INDUSTRY

One of the tests which may be applied to determine the status of competition is the so-called ease-of-entry test for new ventures into an industry.

Ease of entry into the brewing industry is non-existent. Within the past two years only two breweries

started into operation. The Valley Brewing Company at Mercedes, Texas lasted a matter of months. The other, the Dakota Malting and Brewing Company of Bismark, North Dakota, was incorporated by North Dakota businessmen who thought it would be well to have a brewery in that state, as there was none. It was a small plant of a capacity of 75,000 barrels annually. It was constructed at a cost of $400,000. In 1965 it was sold at a sheriff's sale for $284,000.

There have been a few periodic and pathetic efforts, similar to the foregoing, made to enter the brewing industry in recent years, but statistics disclose that *except in the case of an established brewing company building a branch plant, no new brewer has successfully entered the brewing industry in over fifteen years.*

4. THE SALES GAINS OF THE LARGER BREWERS HAVE BEEN AT THE EXPENSE OF THE SMALL BREWERS

The record discloses at pp. 344 through 347 that the top ten brewing companies had increased their share of the market from 32.68 per cent of total sales in 1948 to 45.06 per cent in 1957, and to 52.60 per cent in 1961.

Likewise, the market share of the top twenty-five Brewers increased from 49. 2 per cent in 1948 to 68.99 per cent in 1957, and to 76.96 per cent in 1961.

From the accompanying chart it will be seen that the market concentration of the larger brewers of the nation has continued to increase.

COMPARISON OF TOP BREWERS

	1962	1963	1964	1965
l Beer Sales	91,197,192	93,974,003	98,643,644	100,411,085
s of Top 10 Brewers	50,265,168	53,437,758	57,090,648	61,110,000
Cent of Total Beer Sales, Top 10	55.11%	56.86%	57.87%	60.85%
s of Top 25 Brewers	72,854,354	77,348,453	83,150,534	88,269,000
Cent of Total Beer Sales, Top 25	79.88%	82.30%	84.29%	87.90%
s of All Other Brewers	18,342,838	16,625,550	15,493,110	12,153,058
Cent of Total	20.11%	17.70%	15.71%	12.10%
ber of Brewing Plants	214	198	190	182
ber of Brewing Companies	170	152	144	137

The foregoing chart shows that the larger brewers of the nation have further increased their shares of total beer sales to a point where today the position of the smaller brewers of the nation is most precarious.

The individual sales of each of the top ten brewers and of the top 25 brewers for the years 1962, 1963, 1964, and 1965 appear in the Appendix hereto as Exhibits 2, 3, 4, and 5.

From 1962 to 1965, the top ten brewers of the nation have bettered their aggregate percentage of the market from 55.11 per cent of total sales to 60.85 per cent.

To the same extent the top 25 brewers of the nation have increased their aggregate share from 79.88 per cent in 1962 to 87.90 per cent in 1965.

The effect of this market concentration on the small brewers of the nation is apparent. *Back when this*

merger took place, in 1958, the small brewers of the nation enjoyed 29.29 per cent of the national business in the sale of beer. From 1958 to 1961, this share of the market shrank to 20.11 per cent, and from 1962 to 1965 it further was reduced until *the latest figures show that all the small brewers of the nation only have 12.10 per cent of the beer business.*

The competition which is endangered here in the merger of Pabst and Blatz is not and was not the competition at the most vigorous upper levels of National competition, but the competition at the lower levels of local competition.

The larger brewers in the industry, as can be seen from the foregoing statistics, do not appear to have suffered from the competition among them. Nearly all of the top twenty five brewers continue to show sales gains, year after year. This raises the question concerning where these sales gains are being made.

The size of the market for beer is not really being enlarged, as the per capita consumption, although edging upward, is not making significant gains. Thus, additional users of beer are not being recruited on a large scale. The increased sales of the larger brewers are accounted for only by the constantly diminishing share of the beer market enjoyed by local brewers.

One reason for this is that the smaller brewers of the nation are, of their very nature, unable to operate as efficiently as the larger brewers.

The dominant brewers in the nation have new canning and bottling lines which operate well over twice as fast as the older bottling equipment of the smaller brewers. The smaller brewers cannot afford to replace this old equipment, as the limited sales of most small

brewers cannot utilize the bottling and canning equipment which they presently have for more than one shift a day, and sometimes not even at that rate. This fact makes it obviously difficult for the small brewer to compete on a cost basis with the most efficient operators.

We would not seek to penalize efficiency, but certainly *the efficient Brewer who has been able to extend his operations throughout a wide geographical area of competition should not be allowed to minimize the extent of his injury to competition through his efficient operations by imposing his own standard of size and market area as the norm by which all competition must be judged.*

The national picture does not present an accurate portrait of the status of competition. In actuality, the national statistics are compiled by accumulating the results of the competition in many local markets.

Where the competitors in all areas of the nation are very nearly the same, then national statistics give a true picture of the national market. In the beer industry the actual competitors vary from city to city.

The Pabst Brewing Company has achieved a very respectable 8.2 per cent of national sales. However, this is the result of widely varying market penetration and competition with virtually all the brewers in the nation; *not in the nation as a whole, but in restricted, segmented areas of competition.*

In these segmented areas the Pabst Brewing Company may have a very large share of the market, as is the case in Wisconsin, Illinois and Michigan, or the company may have a very small share of the business, as is the case in many other areas.

Still, the merger of Pabst and Blatz has the capacity and tendency to lessen competition in all areas of the country since the combine is free to draw on its resources so as to concentrate on any specific local area which the company may choose, and through advertising and marketing pressures, cause a threat to local small brewers in any section of the country, regardless of the present or past national market share of the Pabst-Blatz brands.

5. THE PABST BREWING COMPANY IS A DOMINANT COMPETITOR IN THE NATIONAL MARKET

The Pabst Brewing Company has emerged from the acquisition of Blatz to be a dominant force in the marketplace. The following chart shows the rank of Pabst on a national scale since 1961.

THE PABST BREWING COMPANY

	1962	1963	1964	1965
Sales	5,842,707	6,672,000	7,444,000	8,234,000
Rank	3	3	3	3
% Of Total Sales	6.40	7.09	7.54	8.2

This data is drawn from Exhibits 2, 3, 4, and 5, which show the sales of the twenty-five largest brewers in the nation for the years 1962 through 1965.

These Exhibits demonstrate the trend toward concentration in the brewing industry, and the dominant position of the Pabst Brewing Company within this trend.

Whereas the record of the case shows that immediately after the Pabst-Blatz merger, Pabst in 1959 became the sixth largest brewer in the nation, with 4.79 per cent of all beer sold nationally, the company has *almost doubled* its market share in the 6 years since that time.

The financial fortunes of the company, although never dull, glisten with greater luster as each year passes. The following extracts from the Pabst Brewing Company's financial reports will illustrate this.

PABST FINANCIAL DATA
(thousands)

	1962	1963	1964	1965
Sales in Barrels	5,844	6,672	7,444	8,234
Net Sales	$181,379	$202,860	$227,610	$253,500
Net Income	$6,436	$8,027	$10,021	$12,400
Net Income Per Share	$1.38	$1.71	$2.11	$2.62
Capital Expenditures	$7,098	$11,389	$19,110	$13,500

Although the foregoing is certainly self-explanatory in showing the tremendous growth not only in barrels but also in sales and income of the Pabst Brewing Company, it would be well to point up briefly the fact that net income has nearly doubled from 1962 to 1965 and that income per share has likewise nearly doubled while the net sales of the company, in rising from $181 million in 1962 to $253 million in 1965, have risen by 39 per cent.

Additionally, the annual report for the calendar year 1965 lists, as a part of the balance sheet, cash and marketable securities of the value of $35.2 million. In a business such as the brewing industry, this is an unusually high cash reserve which places the company in a most favorable position for further acquisitions in the market. Should this Court decide that the merger between Pabst and Blatz was not illegal under Section 7, the corporation could very easily acquire one or more

additional breweries which would further enhance the competitive position of the company, to the detriment of the small brewers of the country.

6. THE ACQUISITION HAS PARTICULARLY AFFECTED THE STATUS OF THE COMPETITION IN WISCONSIN

The record of the case at page 321 et seq. shows that in 1957, the year immediately prior to the merger of Pabst and Blatz, Blatz was the *leading* brand sold in Wisconsin with 12. 81 per cent of the Wisconsin market. Pabst, in that year was the 4th largest selling beer with 11.14 per cent of the Wisconsin market. The record, through page 325, traces the continued rise of both the Pabst and Blatz brands until in 1961, Pabst and Blatz combined enjoyed 27.41 per cent of the Wisconsin business.

This trend has continued in Wisconsin as the following tabulation will demonstrate.

GROWTH OF PABST BREWERY COMPANY IN WISCONSIN[4]

Year	Barrel Sales of Pabst Brewing Co. in Wisconsin	Pabst Co. % of Wisconsin Sales	Pabst's Rank
1961	905,262	27.41	1
1962	904,879	27.56	1
1963	968,226	28.72	1
1964	1,063,203	30.26	1
1965	1,123,768	32.02	1

[4] Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

While the sales of the Pabst and Blatz brands continue to capture a larger and larger percentage of the market the sales of the other Wisconsin brewers consistently decline. The terrific sales losses which have been felt by these brewers, just between the years 1962

and 1965, are set out in the following tabulation, which is compiled from Exhibits 6 and 9 in the Appendix.

DECLINE IN SALES OF LOCAL WISCONSIN BREWERS

Brewer	1962 Sales, bbls	1965 Sales, bbls	% Intrastate business	Decline from 1962
Berlin Brew Co.	9,174	Out of Business		
Effinger Brg. Co.	9,355	7,903	100	15.1%
Fauerbach Brg. Co.	29,976	23,314	100	22.1%
Fountain Brg. Co.	9,238	1,536	51.37	83.7%
Gettelman Brg. Co.	157,082	66,789	77.28	57.6%
Fox Head Brg. Co.	32,467	Out of Business		
Leinenkugel Brg. Co.	73,040	75,999	95.55	3.4% Gain
Marathon Brg. Co.	8,119	4,229	100	48.2%
Marshfield Brg. Co.	8,248	7,818	100	4.9%
Northern Brg. Co.	18,517	14,163	47.42	23.8%
Oconto Brg. Co.	36,610	33,286	86.67	9.3%
Oshkosh Brg. Co.	53,907	46,754	97.22	13.4%
Peoples Brg. Co.	29,351	28,152	99.15	4.1%
Potosi Brewing Co.	45,516	41,214	43.52	9.5%
Rahr Green Bay Brg. Co.	33,097	25,890	86.92	21.9%
Rhinelander Brg. Co.	17,802	12,131	85.85	32.1%
Rice Lake Brg. Co.	16,260	13,485	80.78	17.3%
Stevens Pt. Brg. Co.	33,963	31,372	100	7.7%
Two Rivers Bev. Co.	8,268	5,547	100	33.0%
G. Walter Brg. Co.	35,748	30,625	100	14.3%
Walter Brg. Co.	30,647	28,273	96.89	7.9%
West Bend Lithia Co.	28,763	26,437	80.46	8.1%

The foregoing tabulation hardly needs further explanation. One brewer's sales declined over 83 per cent. The average decline of all 19 brewers listed was 23.36 per cent. It is obvious that the recent sales successes within the state of Wisconsin, made by Pabst have been at the expense of the smaller brewers operating within that state.

A. The Intrastate Nature of Wisconsin Brewers' Sales

Appellees have attempted to minimize the effect of the intrastate sales in Wisconsin by the Pabst Brewing Company by shifting emphasis to two other factors: (1) the bulk of the beer produced in Wiscon-

sin is sold outside of Wisconsin, and (2) a large volume of beer is imported into Wisconsin.

It is submitted that when the proper perspective is placed upon Wisconsin brewers and upon Wisconsin beer sales within the state, the foregoing factors are irrelevant. Exhibits 6, 7, 8, and 9, which appear in the Appendix show the sale of individual Wisconsin brewers for the years 1962 through 1965.

These statistics show the competitive situation among the Wisconsin brewers themselves, and on their face, show that Wisconsin is an area of significant competition, and should adequately demonstrate that Wisconsin is a "section of the country" within the meaning of Section 7 of the Clayton Act.

Taking these Exhibits year by year, in 1962, there were 29 brewing companies operating within the State of Wisconsin. Eight of these brewers sold their entire volume of beer in Wisconsin. Eight more sold in excess of 80 per cent of their beer within the State of Wisconsin. Thus, over half of the brewers in Wisconsin operate almost entirely within that state.

These statistics, which indicate that a great volume of Wisconsin-brewed beer is sold outside the State of Wisconsin, must also be further analyzed. Actually, the largest sellers of beer within Wisconsin for 1962 were the Pabst Brewing Company, the Schlitz Brewing Company, and the Miller Brewing Company. These same three brewers during 1962 also shipped more beer outside the State of Wisconsin than any other brewers.

Insofar as the other 16 brewers who do an intrastate business within Wisconsin are concerned, *it makes no*

difference that these three brewers, out of the total of 28, do any business outside the state, as they are also the leaders as far as intrastate sales are concerned.

It is accordingly reasonable to disregard the out-of-state sales of the Pabst Brewing Company, the Schlitz Brewing Company, and the Miller Brewing Company, as these out-of-state sales have no bearing, in any event, upon the intrastate sales of beer by these companies.

By subtracting the out-of-state sales of these three companies from the compilation of out-of-state sales it becomes apparent that 79.34 per cent of all sales, both in and out of the State of Wisconsin by the remaining brewers—other than Pabst, Schlitz, and Miller—were made within the state.

To the same extent in 1963 there were 28 brewing companies operating within the State of Wisconsin whose total Wisconsin sales amounted to 2,588,714 barrels. Concerning the character and marketing area of these brewers' operations, it is apparent that 8 of these brewers made all of their sales within the State of Wisconsin. In addition, nine brewers sold over 80 per cent of their beer within the State of Wisconsin. By removing the out-of-state sales of Pabst, Miller, and Schlitz from the 1963 compilation, this leaves 3,247,947 barrels sold by all the other Wisconsin brewers both in and out of the state, and this amounts to 79.70 per cent of sales.

Going over to 1964 statistics, the same picture is presented. In 1964 there were 27 brewers operating within the State of Wisconsin. Again, 8 of these brewers sold all of their beer within the state. In addition to these, 9 brewers in 1964 sold in excess of 80 per cent

of their beer within the State of Wisconsin. In order to view the true measure of intrastate operations in Wisconsin it is necessary again to extract the out-of-state sales by Pabst, Schlitz, and Miller. This would leave 3,432,491 barrels of beer sold both in and out of Wisconsin by all the remaining Wisconsin brewers. This means that 78.88 per cent of all the remaining sales both in and out of Wisconsin were intrastate.

Finally, to consider 1965 statistics, in that year, there were 26 brewing companies operating within the State of Wisconsin. Seven of these brewers made their entire sales within the state. Additionally, 9 brewers sold over 80 per cent of their beer within the state. Taking the out-of-state sales by Pabst, Schlitz, and Miller out of the statistical compilation, this leaves 3,437,050 barrels sold by all the remaining Wisconsin brewers both in and out of the state. This means that 78.90 per cent of all the remaining beer sold by the brewers of Wisconsin, in any area, were totally intrastate.

B. The Significance of Draught Beer

The record at page 327 shows that Wisconsin is first in the consumption of draught beer. In 1961, 39 per cent of the beer sold in Wisconsin was draught beer. This was considerably above the national average for all of the states, which was 19 per cent draught and the remainder in bottles and cans.

The significance of this is that generally draught beer is an index of small brewers' activity.

As we have seen, the small brewers, and all brewers, originally sold their beer in the localities close to the plant. This was traditionally draught. It is signifi-

cant that in 1961 the draught beer sales were highest in the state with also the largest number of brewers.

It is likewise significant that this same state of Wisconsin led all others in a per capita consumption of 25.5 gallons per person in 1961. It will be noted that the state with the second largest number of breweries, and also the second highest percentage of draught beer, was Pennsylvania, which in 1961 had 35.5 per cent of its total sales in draught beer.

At the other end of the spectrum, the states with the lowest per capita consumption are Alabama and Mississippi, with a per capita consumption of less than six gallons per person. These same states had draught beer sales in 1961 of 2.65 per cent for Mississippi and .71 per cent for Alabama. It is significant that neither of these states has a brewery within its borders.

7. THE MERGER HAS AFFECTED THE STATUS OF COMPETITION IN THE STATE OF MICHIGAN

The record at pages 329 through 333 graphically depicts the growth of the Blatz sales in Michigan following the Pabst-Blatz merger.

Pabst beer was hardly a factor in the market in 1957, and Blatz was then the sixth largest selling brand with 5.72 per cent of Michigan sales. By 1959 Blatz was *second* and Pabst was selling 1.24 per cent in the Michigan market. The Blatz brand gradually increased its percentage share of the market, but in 1961 it still stood in 2nd place behind the leader, Stroh.

In the years since 1961, the Pabst-Blatz combination has taken over 1st place in the Michigan market as is exemplified in the following table:

GROWTH OF PABST SALES IN MICHIGAN[5]

(In Barrels of 31 gallons)

Year	Sales of Pabst Brewing Co.	Pabst Co. % of Sales	Pabst's Rank
1961	836,542	15.96	2
1962	969,386	18.58	2
1963	1,257,720	24.25	1
1964	1,429,387	26.12	1
1965	1,578,073	28.58	1

[5] Source: Michigan Liquor Control Commission, Mfgrs. & Wholesalers Dept.

The amazing story, however, is not the rise of Blatz in the marketplace, but rather the *rise of Pabst.* As can be seen in the following table, the Pabst brand in Michigan rose from less than 1 per cent in 1961 to over 14 per cent in 1965 to move ahead of the Blatz brand by one percentage point.

BREAKDOWN AS BETWEEN MICHIGAN SALES OF PABST AND BLATZ[6]

Year	Pabst Brand Sales as a Percentage of Total Sales	Blatz Brand Sales as a Percentage of Total Sales
1961	.85[7]	15.12[7]
1962	2.87	15.71
1963	9.15	15.10
1964	11.58	14.54
1965	14.85	13.73

[6] Source: Michigan Liquor Control Commission, Mfgrs. & Wholesalers Dept.

[7] Computed from Joint Exhibit 85.

The same situation as occurred in Wisconsin also seems to have repeated itself in Michigan between the years 1962 and 1965. There appear in the Appendix hereto as Exhibits 10, 11, 12 and 13, the statistics for sales of beer in Michigan by all firms selling over 5,000 barrels in 1962, 1963, 1964 and 1965. From these Exhibits the following tabulation has been prepared showing the sales of some of the smaller brewers selling in Michigan:

Brewer	1962 Sales, bbls.	1965 Sales, bbls.	Decline from 1962
Gobel Brg. Co.	195,676	Out of business	—
Bosch Brewing Co.	88,084	49,865	43.5%
Atlantic Brg. Co.	68,796	16,402	76.2%
Sebewaing Brg. Co.	27,827	Not available	—
Buckeye Brg. Co.	26,735	16,346	39.0%
Canadian Ace Brg. Co.	13,808	10,334	25.4%
Geyer Brg. Co.	10,887	15,102	39% gain
Peter Hand Brg. Co.	10,643	19,827	86% gain
Indep. Milw. Brg. Co.	10,242	Out of business	—
Hornell Brg. Co.	5,983	Out of business	—
ALL OTHER BREWERS	(44) 52,898	(32) 20,405	61.3%

The foregoing speaks for itself. Two brewers had substantial gains, and four brewers had substantial declines in the volume of Michigan sales. Three other brewers in the listing went out of business during the period. *Most important, however, is the fact that there was a 61 per cent decline in the barrelage of the very smallest brewers selling within the State of Michigan between 1962 and 1965. Likewise, the number of small firms doing business in Michigan declined by 37 per cent.*

8. THE COMPETITIVE SITUATION IN ILLINOIS

Statistics showing Illinois beer sales from 1961 to date have been kept confidential by the Illinois Liquor Control Commission. Yet, the merger of Pabst and Blatz has been a most serious factor in the declining numbers and sales of small brewers located in Illinois, and the number of small brewers elsewhere who sell beer within the state.

On July 1, 1957 there were 18 breweries operating within Illinois. There are exactly half that many today. By deduction it might be asserted that the situation which has been shown to prevail regarding the small brewers in Wisconsin and in Michigan has also occurred in Illinois. Even though records are not available for recent Illinois sales, it must be assumed that the failure of nine small brewers within the state between 1957 and 1966 was due, in some measure, to the activities of the Pabst-Blatz Company. Unfortunately, to what degree this competition has suffered cannot be definitely shown.

9. THE APPLICABLE LAW OF THE SITUATION WOULD PROHIBIT THIS MERGER

The function of this brief is not to argue the law of the case but to present the factual situation as it affects the small brewers. Still, it is necessary to point out that the foregoing competitive injury to the small brewer, within certain areas of the country as a whole, within the State of Wisconsin, and within the State of Michigan, is just what the Statute was designed to prohibit.

A. The Legislative History of the Clayton Act Clearly Envisions Prohibition of the Merger

Section 7 of the Clayton Act, as amended, states in part, "no corporation engaged in commerce shall acquire, directly or indirectly, . . . the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce *in any section of the country,* the effect of such acquisition may be *substantially to lessen competition* or *tend to create a monopoly.* (Italics supplied)

The Intent of the Statute

Congress did not intend, as counsel for defendants below would urge, that a monopoly must be established by the merger of the two corporations, before such merger would fall within the prohibitions of the Clayton Act. Congress has attempted to set up a road block against mergers tending to create a monopoly, and has thus legislated not only against those having a nationwide competitive effect, but also against those of a more localized nature, which may substantially lessen competition or tend to create a monopoly *in any section of the country.*

The intent of Congress in this regard is made clear in Senate Report 1775 of June 2, 1950 and House Report 1191 of August 4, 1949, wherein it is stated:

> The intent here, as in other parts of the Clayton Act, is to cope with monopolistic tendencies in their incipiency and well before they have attained such effect as would justify a Sherman Act proceeding.

Commenting further on this objective, the Congress stated in its House and Senate Reports:

> Thus the phrase, "in any section of the country" was made applicable to both the lessening of competition and the tendency to create a monopoly . . . Hence, an acquisition is not to be interpreted merely in terms of either its effect on competition or its tendency to create a monopoly "in the nation as a whole." The Act is to be violated if, as a result of an acquisition, there would be a substantial lessening of competition or a tendency to create a monopoly in any section of the country.

The House and Senate Reports discuss in detail the meaning of the phrase, "section of the country." The following further excerpt is most pertinent to the facts of the instant case:

> Although it is, of course, impossible to define rigidly what constitutes a "section of the country," certain broad standards reflecting the general intent of Congress can be set forth . . . What constitutes a section will vary *with the nature of the product.*
>
> Owing to the differences in the size and character of markets, *it would be meaningless from an economic point of view, to attempt to apply for all products a uniform definition of section, . . . A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product such as milk.*
>
> In determining the area of effective competition for a given product, it will be necessary to decide what comprises an appreciable segment of the market. *An appreciable segment of the market* may not only be a segment which covers an appreciable segment of the trade, but it *may also be*

> *a segment which is largely segregated from, independent of, or not affected by the trade in that product in other parts of the country.*
>
> It should be noted that although the section of the country in which there may be a lessening of competition *will normally be one in which the acquired company or the acquiring company may do business,* the bill is broad enough to cope with a substantial lessening of competition in any other section of the country as well. (Italics supplied)

B. Cases Decided Under Section 7 of the Clayton Act Show the Illegality of This Merger

The foregoing pronouncement of Congress concerning milk is particularly applicable. Perhaps if the Court below had emphasized the comparison of beer with milk—instead of cigarettes—it might have reached a different decision.

In its opinion below in the case of *United States* v. *Pabst Brewing Company,* 233 F. Supp. 475 (1964), the Court stated, at page 485:

> We consider that the beer market resembles the cigarette market more than the steel market in that the record reveals that the use of beer is nation-wide, its sales are not limited primarily to states having any particular industry and no state or area can be said to be predominant in the sale or consumption of beer.

The foregoing is not well founded in the record, which demonstrates that the sale of beer *does* vary from state to state.

Also, according to *Standard & Poor's Industry Survey* of November 1965, there were ten states which currently account for 62% of total beer sales in the

United States. These states are New York, California, Pennsylvania, *Illinois,* Ohio, *Michigan,* Texas, New Jersey, *Wisconsin,* and Massachusetts. In the same survey it was pointed out that ten states account for 72% of beer production and these states are *Wisconsin,* New York, Missouri, California, New Jersey, Pennsylvania, Ohio, *Illinois,* Minnesota and *Michigan.*

There are problems in citing cases in connection with an alleged "Section 7" violation, as each case concerns itself with a different industry, and a different competitive situation. Hence, each separate case has to be decided on its merits in line with the Congressional intent of the statute.

However, there are some broad principles reached in recent "Section 7" cases which are relevant here. In the case of *Brown Shoe Company* v. *United States,* 370 U.S. 294 (1961), this Court stated at page 337 as follows:

> Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant.

The facts of the *Brown Shoe* case are not material to this discussion; but the tests concerning whether, in a given instance, a "relevant market" is a sufficiently separate area of competition are most pertinent.

This case sets up several guidelines. The segmentation of a geographic market must: 1. not be formal or legalistic; 2. correspond to the commercial realities of the industry; and 3. be economically significant.

The national market has been agreed upon as a relevant geographic market for the purposes of this case. However, at issue is whether or not State of Wisconsin, and the three-state area of Wisconsin, Michigan, and Illinois may be considered as relevant geographic markets.

With particular reference to the State of Wisconsin, the selection of this state as a relevant market area is neither formal nor legalistic. The selection of the State of Wisconsin because of its borders or state laws might constitute a formal or legal segmentation, if these were the only factors. However, the state has not been selected for these reasons alone. The majority of the brewers in Wisconsin compete almost solely within the state. The Pabst and Blatz brewing plants were both physically located within the State of Wisconsin and the companies actively competed with the other Wisconsin brewers in the state, and ***between themselves*** previous to the merger.

The fact that some of the brewers within Wisconsin sold beer outside of the state is almost irrelevant; and it becomes irrelevant upon investigation.

Had the situation been that brewers in Wisconsin were supplying the United States as a whole, then the arguments against making Wisconsin a separate geographic market might be valid. Appellees have made much of the fact that the majority of beer produced in Wisconsin is sold outside of Wisconsin. However, this has been demonstrated to be true only for a few of the 28 remaining brewers who are located within the state. It has been further proven that the largest number of brewers in the nation compete locally in Wisconsin. The highest percentage of draft beer is

sold in Wisconsin. The highest per capita consumption is in Wisconsin, and Wisconsin produces more beer than any other state. Accordingly, such a market becomes economically significant and competition strictly within the state cannot be said to constitute *de minimus* competition.

The competition takes place where the competitors are. A majority of the competitors injured by the merger are physically located in Wisconsin and sell their beer in Wisconsin. For these brewers this is the *only* significant area of competition, and thus Wisconsin as a geographic market corresponds to the "commercial realities" of the industry. Accordingly, the reasoning of this court in the case of *U. S.* v. *Philadelphia National Bank*, 374 U.S. 321 (1963), is most important concerning the test of the anticompetitive effect of the merger. At page 363 this court stated:

> . . . we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.

It has been shown that the small brewers are not the most efficient operators in the brewing industry. However, concerning this point the case of *Crown Zellerbach Corp.* v. *Federal Trade Commission*, 296 F. 2d 800 (1961), *cert. denied*, 370 U.S. 397, is most interesting. In that case the Court held at page 825:

> It is plain however from the Act and its legislative history that concern with such considerations (of increased efficiency) was no part of the con-

> gressional thought. Congress was not concerned about increased efficiency; it was concerned about the competitor—the small businessman whose little independent units are gobbled up by the bigger ones," and about other competitors whose opportunities to meet the price of the largest concern and hence compete with it might be diminished by a merger which increased the concentration of power in the large organization.

The Court had expressed similar concern in the *Brown Shoe* case, *supra*, wherein at page 333 it was stated:

> Congress was desirous of preventing the formation of further oligopolies with their attendant adverse effects upon local control of industry and upon small business. Where an industry was composed of numerous independent units, Congress appeared anxious to preserve this structure.

Finally, the fact that Section 7 of the act would proscribe against the merger in the situation at bar is further exemplified in the *Philadelphia National Bank* case, *supra*, wherein this Court stated:

> The proper question to be asked . . . is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate.

The anticompetitive effect of the merger has been shown to have been direct and immediate within the State of Wisconsin, to the detriment of the small brewers operating there.

Likewise from the statistical picture drawn in the nation as a whole from 1957 to 1965, the effect of the

merger of Pabst and Blatz has been shown to be a direct factor in the diminishing sales of small brewers generally.

CONCLUSION

For the foregoing reasons the Brewers' Association of America, and its small brewer members throughout the nation, respectfully urge that the government has made out a *prima facie* case in the District Court.

WHEREFORE the Brewers' Association of America prays that this case be reversed and remanded.

Respectfully submitted,

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EXHIBIT 1

Brewer Members of the Brewer's Association of America

Altoona Brewing Co., Altoona, Pennsylvania
American Brewery, Inc., Baltimore, Maryland
Berlin Brewing Co., Berlin, Wisconsin
Blitz-Weinhard Co., Portland, Oregon
Bosch Brewing Co., Houghton, Michigan
Peter Bub Brewery, Inc., Winona, Minnesota
Buckeye Brewing Co., Toledo, Ohio
The Burger Brewing Co., Cincinnati, Ohio
Carling Brewing Co., Cleveland, Ohio
Century Brewery Corporation, Norfolk, Virginia
Cold Spring Brewing Co., Cold Spring, Minnesota
Columbia Brewing Co., Shenandoah, Pennsylvania
Dakota Malting & Brewing Co., Bismarck, North Dakota
Dawson's Brewery, Inc., New Bedford, Massachussetts
Diamond Spring Brewery, Inc., Lawrence, Massachusetts
Dixie Brewing Co., Inc., New Orleans, Louisiana
Du Bois Brewing Co., DuBois, Pennsylvania
Dubuque Star Brewing Co., Dubuque, Iowa
Duluth Brewing & Malting Co., Duluth, Minnesota
Duquesne Brewing Company of Pittsburgh, Penna., Pittsburgh, Pennsylvania
Eastern Brewing Corporation, Hammonton, New Jersey
Effinger Brewing Co., Baraboo, Wisconsin
Erie Brewing Co., Erie, Pennsylvania
Falls City Brewing Co., Inc., Louisville, Kentucky
Fauerbach Brewing Co., Madison, Wisconsin
Fesenmeier Brewing Co., Huntington, West Virginia
Fischbach Brewing Co., St. Charles, Missouri
Fitger Brewing Co., Duluth, Minnesota
Fuhrmann & Schmidt Brewing Co., Shamokin, Pennsylvania
The Genesee Brewing Co., Inc., Rochester, New York
Gettelman Brewing Corp., Milwaukee, Wisconsin

Geyer Brothers Brewing Co., Frankenmuth, Michigan
Grace Bros. Brewing Co., Santa Rosa, California
Great Falls Breweries, Inc., Great Falls, Montana
John Hauenstein Co., Inc., New Ulm, Minnesota
Home Brewing Company, Richmond, Virginia
Horlacher Brewing Co., Allentown, Pennsylvania
Jos. Huber Brewing Co., Monroe, Wisconsin
The Hudepohl Brewing Co., Cincinnati, Ohio
Hull Brewing Co., New Haven, Connecticut
Jones Brewing Co., Smithton, Pennsylvania
Chas. D. Kaier Co., Inc., Mahanoy City, Pennsylvania
Fred Koch Brewery, Dunkirk, New York
Latrobe Brewing Co., Latrobe, Pennsylvania
Jacob Leinenkugel Brewing Co., Chippewa Falls, Wisconsin
The Lion Inc., Wilkes-Barre, Pennsylvania
Lone Star Brewing Co., San Antonio, Texas
Maier Brewing Co., Los Angeles, California
Marathon City Brewing Co., Marathon, Wisconsin
Marshfield Brewing Co., Marshfield, Wisconsin
Metropolis Brewery of N. J. Inc., Trenton, New Jersey
Minneapolis Brewing Co., Minneapolis, Minnesota
Mount Carbon Brewery, Pottsville, Pennsylvania
Louis F. Neuweiler's Sons, Allentown, Pennsylvania
Northern Brewing Co., Superior, Wisconsin
Oconto Brewing Co., Oconto, Wisconsin
Oertel Brewing Co., Inc., Louisville, Kentucky
Old Crown Brewing Corp., Fort Wayne, Indiana
Henry F. Ortlieb Brewing Co., Philadelphia, Pennsylvania
Oshkosh Brewing Co., Oshkosh, Wisconsin
The Peoples Brewing Co., Oshkosh, Wisconsin
Potosi Brewing Co., Potosi, Wisconsin
Reading Brewing Co., Reading, Pennsylvania
Reisch Brewing Co., Springfield, Illinois
Rhinelander Brewing Co., Rhinelander, Wisconsin
Rice Lake Brewing Co., Rice Lake, Wisconsin
August Schell Brewing Co., New Ulm, Minnesota

Schoenling Brewing Co., Cincinnati, Ohio
Sicks' Rainier Brewing Co., Seattle, Washington
Sieben's Brewery Co., Chicago, Illinois
Silver Springs Brewing Co., Tacoma, Washington
William Simon Brewery, Buffalo, New York
Spoetzl Brewery, Shiner, Texas
Standard Rochester Brewing Co., Inc., Rochester, New York
Steam Beer Brewing Co., San Francisco, California
Stevens Point Beverage Co., Stevens Point, Wisconsin
Storz Brewing Co., Omaha, Nebraska
Straub Brewery, St. Marys, Pennsylvania
Sunshine Brewing Co., Reading, Pennsylvania
The Tivoli Brewing Co., Denver, Colorado
Two Rivers Beverage Co., Two Rivers, Wisconsin
Van Merritt Brewing Co., Chicago, Ill.
August Wagner Breweries, Inc., Columbus, Ohio
Walter Brewing Co., Eau Claire, Wisconsin
The Walter Brewing Co., Pueblo, Colorado
Geo. Walter Brewing Co., Appleton, Wisconsin
Warsaw Brewing Corp., Warsaw, Illinois
West Bend Lithia Co., West Bend, Wisconsin
The West End Brewing Co., Utica, New York

Note: Multiple plant ownership omitted

EXHIBIT 2

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1962	% of Total Sales	
Anheuser-Busch	9,034,636	9.90	
Schlitz	6,880,277	7.54	
Pabst	5,842,707	6.40	
Carling	5,358,608	5.87	
Falstaff	5,300,000	5.81	
Ballantine	4,550,000	4.98	
Hamms	3,724,000	4.08	
Schaefer	3,777,940	4.14	
Liebmann	2,992,000	3.28	
Miller	2,805,000	3.07	
			Total Top Ten— 50,265,168
Coors	2,773,000	3.04	
Lucky Lager	2,160,000	2.36	
Stroh	2,036,807	2.23	
Drewrys	1,950,000	2.13	
Schmidt	1,870,876	2.05	
Olympia	1,741,000	1.90	
Pearl	1,476,303	1.61	
National	1,381,467	1.51	
Ruppert	1,200,000	1.31	
Narragansett	1,160,563	1.27	
Jackson	1,032,000	1.13	
Duquesne	1,003,018	1.09	
Genesee	965,000	1.05	
Associated	948,040	1.03	
Lone Star	891,112	.97	
			Total Top 25— 72,854,354

* Source: Modern Brewery Age.

EXHIBIT 3

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1963	% of Total Sales	
Anheuser-Busch	9,267,393	9.86	
Schlitz	7,834,253	8.33	
Pabst	6,672,000	7.09	
Carling	5,681,141	6.04	
Falstaff	5,548,176	5.90	
Ballantine	4,495,000	4.78	
Schaefer	4,042,395	4.30	
Hamms	3,826,400	4.07	
Coors	3,053,000	3.24	
Liebmann	3,018,000	3.21	
			Total Top Ten— 53,437,758
Miller	2,900,000	3.11	
Drewrys	2,601,563	2.76	
Stroh	2,045,350	2.17	
General	1,982,446	2.10	
Schmidt	1,934,000	2.05	
Olympia	1,775,000	1.88	
Pearl	1,598,631	1.70	
National	1,400,567	1.48	
Ruppert	1,270,000	1.35	
Narragansett	1,226,000	1.30	
Associated	1,148,748	1.22	
Genesee	1,100,000	1.17	
Jackson	1,018,000	1.08	
Duquesne	1,010,000	1.07	
Lone Star	900,390	.95	
			Total Top 25— 77,348,453

* Source: Modern Brewery Age.

EXHIBIT 4

Sales of Leading Brewers*

(Barrels of 31 Gallons)

Brewer	1964	% of Total Sales	
Anheuser-Busch	10,235,203	10.37	
Schlitz	8,266,136	8.37	
Pabst	7,444,000	7.54	
Falstaff	5,819,659	5.89	
Carling	5,775,000	5.85	
Schaefer	4,446,634	4.50	
Ballantine	4,368,000	4.42	
Hamms	3,729,000	3.78	
Coors	3,420,000	3.46	
Miller	3,287,016	3.33	
			Total Top Ten— 57,090,648
Rheingold	3,108,540	3.15	
Drewrys	2,610,349	2.64	
Stroh	2,284,000	2.31	
Schmidt	2,200,000	2.23	
Olympia	2,168,000	2.19	
General	1,753,000	1.77	
National	1,701,765	1.72	
Pearl	1,692,758	1.71	
Associated	1,485,474	1.50	
Ruppert	1,470,000	1.49	
Narragansett	1,275,000	1.29	
Genesee	1,225,000	1.24	
Duquesne	1,095,000	1.11	
Jackson	1,048,000	1.06	
Lone Star	943,000	.95	
			Total Top 25— 83,150,534

* Source: Modern Brewery Age.

EXHIBIT 5

Sales of Leading Brewers[1]

(Barrels of 31 Gallons)

Brewer	1965	% of Total Sales	
Anheuser-Busch	11,800,000	11.7	
Schlitz	8,600,000	8.5	
Pabst	8,234,000	8.2	
Falstaff	6,300,000	6.3	
Carling	5,251,000	5.5	
Schaefer	4,358,000	4.3	
Associated	4,250,000	4.2	
Ballantine	4,240,000	4.2	
Rheingold	4,236,000	4.2	
Hamms	3,841,000	3.8	
			Total Top Ten— 61,110,000
Miller	3,660,000	3.6	
Coors	3,560,000	3.5	
Stroh	2,402,000	2.4	
Olympia	2,383,000	2.3	
Schmidt	2,370,000	2.3	
National	1,873,000	1.8	
Pearl	1,712,000	1.7	
General	1,670,000	1.6	
Genesee	1,310,000	1.3	
Duquesne	1,127,000	1.1	
Jackson	1,110,000	1.1	
Lone Star	1,057,000	1.0	
(unknown)[2]	1,000,000	1.0	
(unknown)	975,000	.97	
(unknown)	950,000	.95	
			Total Top 25— 88,269,000

[1] Source: National Beer Wholesalers Association, and Brewing World (Preliminary estimates).

[2] Assumed figures for completion of Top 25 Brewers.

Sales of Individual Wisconsin Brewers*

EXHIBIT 6

Barrels of 31 gallons

Brewery	1962 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg., Berlin	9,100.40	73.80	9,174.20	99.21
Effinger Brg. Co., Baraboo	9,355.15	—	9,355.15	100.00
Fauerbach Brg. Co., Madison	29,976.57	—	29,976.57	100.00
Fountain Brg. Co., Fountain City	2,769.82	6,468.34	9,238.16	29.99
Fox Head, Waukesha	32,467.20	43,372.49	75,839.69	42.81
Gettelman Brg. Co., Milwaukee	113,236.80	43,845.74	157,082.54	72.09
Heileman Brg. Co., LaCrosse	142,330.52	288,560.61	430,891.13	33.03
Heileman Brg. Co., Sheboygan	143,367.22	74,700.37	218,067.59	65.75
Huber Brg. Co., Monroe	19,279.78	47,391.58	66,671.36	28.92
Indep. Milwaukee Bry., Milwaukee	43,298.32	89,465.61	132,763.93	32.62
Leinenkugel Brg. Co., Chippewa Falls	70,822.61	2,217.41	73,040.02	96.97
Marathon City Brg. Co., Marathon	8,119.95	—	8,119.95	100.00
Marshfield Brg. Co., Marshfield	8,248.37	—	8,248.37	100.00
Miller Brg. Co., Milwaukee	144,691.31	2,489,278.16	2,633,969.47	5.50
Northern Brg. Co., Superior	10,926.04	7,591.32	18,517.36	59.01
Oconto Brg. Co., Inc., Oconto	34,734.30	1,875.75	36,610.05	94.88
Oshkosh Brg. Co., Oshkosh	53,536.40	371.21	53,907.61	99.32
Pabst Brg. Co., Milwaukee	904,879.13	2,174,207.20	3,079,086.33	29.39
Peoples Brg. Co., Oshkosh	29,351.99	—	29,351.99	100.00
Potosi Brg. Co., Potosi	19,384.07	26,132.66	45,516.73	42.59
Rahr Green Bay Brg. Co., Green Bay	29,719.04	5,378.76	33,097.80	83.76
Rhinelander Brg. Co., Rhinelander	15,344.11	2,457.97	17,802.08	86.20
Rice Lake Brg. Co., Rice Lake	13,946.82	2,313.81	16,260.63	85.78
Schlitz Brg. Co., Inc., Milwaukee	457,236.57	3,482,084.34	3,939,320.91	11.61
Stevens Point Bry., Stevens Point	33,963.58	—	33,963.58	100.00
Two Rivers Bev. Co., Two Rivers	8,286.04	—	8,286.04	100.00
Walter Brg. Co., Appleton	35,748.22	—	35,748.22	100.00
Walter Brg. Co., Eau Claire	30,361.82	285.30	30,647.12	99.08
West Bend Lithia Co., West Bend	25,500.53	3,262.98	28,763.51	88.66
Totals	2,479,976.68	8,791,335.41	11,271,312.09	22.01

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Barrels of 31 gallons

Brewery	1963 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg. Co., Berlin	7,957.79	277.75	8,235.54	96.64
Effinger Brg. Co., Baraboo	9,051.95	—	9,051.95	100.00
Fauerbach Brg. Co., Madison	27,605.45	—	27,605.45	100.00
Fountain Brg. Co., Fountain City	2,762.74	4,585.69	7,348.43	37.61
Gettelman Brg. Co., Milwaukee	114,598.67	47,373.82	161,972.49	70.76
Heileman Brg. Co., LaCrosse	172,367.77	341,552.71	513,920.48	33.54
Heileman Brg. Co., Sheboygan	151,707.96	83,588.40	235,296.36	64.48
Huber Brg. Co., Monroe	26,424.89	63,469.98	89,894.87	29.40
Indep. Milwaukee Bry., Milwaukee	50,059.66	65,261.17	115,320.83	43.41
Leinenkugel Brg. Co., Chippewa Falls	72,656.60	2,610.34	75,266.94	96.54
Marathon City Brg. Co., Marathon	6,739.94	—	6,739.94	100.00
Marshfield Brg. Co., Marshfield	8,412.54	—	8,412.54	100.00
Miller Brg. Co., Milwaukee	134,279.79	2,500,811.82	2,635,091.61	5.10
Northern Brg. Co., Superior	11,094.40	7,123.89	18,218.89	60.91
Oconto Brg. Co., Inc., Oconto	34,248.42	2,885.12	37,133.54	92.24
Oshkosh Brg. Co., Oshkosh	54,720.99	293.33	55,014.32	99.47
Pabst Brg. Co., Milwaukee	968,226.25	2,520,545.57	3,488,771.82	27.76
Peoples Brg. Co., Oshkosh	29,066.23	—	2,906.23	100.00
Potosi Brg. Co., Potosi	18,669.91	24,530.22	43,200.13	32.22
Rahr Green Bay Brg. Co., Green Bay	28,675.93	5,347.64	34,023.57	84.29
Rhinelander Brg. Co., Rhinelander	13,938.32	2,236.21	16,174.53	86.18
Rice Lake Brg. Co., Rice Lake	13,652.50	2,835.16	16,487.66	82.81
Schlitz Brg. Co., Inc., Milwaukee	522,272.06	3,963,024.53	4,485,296.59	11.65
Stevens Point Bry., Stevens Point	33,307.11	—	33,307.11	100.00
Two Rivers Bev. Co., Two Rivers	7,189.71	—	7,189.71	100.00
Walter Brg. Co., Appleton	34,163.65	—	34,163.65	100.00
Walter Brg. Co., Eau Claire	29,340.33	844.45	30,184.78	97.21
West Bend Lithia Co., West Bend	24,570.22	4,415.27	28,985.49	84.77
Totals	2,588,714.70	9,643,613.07	12,232,327.77	21.17

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Sales of Individual Wisconsin Brewers*

EXHIBIT 8

Barrels of 31 gallons

Brewery	1964 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Berlin Brg. Co., Berlin	5,432.91	89.11	5,522.02	98.39
Effinger Brg. Co., Baraboo	9,487.09	—	9,487.09	100.00
Fauerbach Brg. Co., Madison	23,666.52	—	23,666.52	100.00
Fountain Brg. Co., Fountain City	2,598.76	3,492.33	6,091.09	42.67
Gettelman Brg. Co., Milwaukee	116,313.54	50,562.36	166,875.90	69.71
Heileman Brg. Co., LaCrosse	193,346.04	425,957.38	619,303.42	31.22
Heileman Brg. Co., Sheboygan	153,570.10	112,126.65	265,696.75	57.80
Huber Brg. Co., Monroe	31,629.80	77,940.91	109,570.71	28.87
Leinenkugel Brg. Co., Chippewa Falls	74,916.17	2,947.47	77,863.64	96.22
Marathon City Brg. Co., Marathon	6,085.88	—	6,085.88	100.00
Marshfield Brg. Co., Marshfield	8,175.43	—	8,175.43	100.00
Miller Brg. Co., Milwaukee	133,843.00	2,989,545.46	3,123,388.46	4.29
Northern Brg. Co., Superior	9,919.06	7,535.37	17,454.43	56.83
Oconto Brg. Co., Inc., Oconto	32,300.78	3,948.95	36,249.73	89.11
Oshkosh Brg. Co., Oshkosh	52,495.01	884.41	53,379.42	98.35
Pabst Brg. Co., Milwaukee	1,063,203.35	2,829,828.62	3,893,031.97	27.32
Peoples Brg. Co., Oshkosh	29,489.82	—	29,489.82	100.00
Potosi Brg. Co., Potosi	18,291.37	24,866.59	43,157.96	42.39
Rahr Green Bay Brg. Co., Green Bay	25,963.52	4,554.70	30,518.22	85.08
Rhinelander Brg. Co., Rhinelander	13,228.21	798.80	14,027.01	94.32
Rice Lake Brg. Co., Rice Lake	12,442.31	2,548.55	14,990.86	83.01
Schlitz Brg. Co., Inc., Milwaukee	566,106.24	4,367,381.31	4,933,487.55	11.48
Stevens Point Bry., Stevens Point	32,958.15	—	32,958.15	100.00
Two Rivers Bev. Co., Two Rivers	7,734.16	—	7,734.16	100.00
Walter Brg. Co., Appleton	32,626.96	—	32,626.96	100.00
Walter Brg. Co., Eau Claire	28,614.29	1,007.55	29,621.84	96.27
West Bend Lithia Co., West Bend	23,297.29	5,504.09	28,801.38	80.89
Totals	2,707,725.06	10,911,520.61	13,619,245.67	19.89

*Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

Sales of Individual Wisconsin Brewers*

Barrels of 31 gallons

EXHIBIT 9

Brewery	1965 Wisconsin Sales	Out of State	Total Sales	% Intrastate
Effinger Brg. Co., Baraboo	7,903.69	——	7,903.69	100.00
Fauerbach Brg. Co., Madison	23,314.10	——	23,314.10	100.00
Fountain Brg. Co., Fountain City	789.32	747.60	1,536.92	51.37
Gettelman Brg. Co., Milwaukee	51,612.32	15,177.57	66,789.89	77.28
Heileman Brg. Co., LaCrosse	195,439.73	468,053.08	663,492.81	29.46
Heileman Brg. Co., Sheboygan	143,705.20	126,068.19	269,773.39	53.27
Huber Brg. Co., Monroe	30,876.49	80,810.80	111,687.29	27.65
Leinenkugel Brg. Co., Chippewa Falls	72,610.02	3,389.23	75,999.25	95.55
Marathon City Brg. Co., Marathon	4,229.55	——	4,229.55	100.00
Marshfield Brg. Co., Marshfield	7,818.28	——	7,818.28	100.00
Miller Brg. Co., Milwaukee	217,761.02	3,383,139.65	3,600,900.67	6.05
Northern Brg. Co., Superior	6,715.01	7,448.97	14,163.98	47.42
Oconto Brg. Co., Inc., Oconto	28,847.66	4,439.33	33,286.99	86.67
Oshkosh Brg. Co., Oshkosh	45,454.37	1,300.06	46,754.43	97.22
Pabst Brg. Co., Milwaukee	1,123,768.29	3,033,313.86	4,157,082.15	27.04
Peoples Brg. Co., Oshkosh	27,909.92	242.50	28,152.42	99.15
Potosi Brg. Co., Potosi	17,932.91	23,281.42	41,214.33	43.52
Rahr Green Bay Brg. Co., Green Bay	22,003.11	3,887.17	25,890.28	86.92
Rhinelander Brg. Co., Rhinelander	10,413.55	1,717.70	12,131.25	85.85
Rice Lake Brg. Co., Rice Lake	10,893.24	2,592.51	13,485.75	80.78
Schlitz Brg. Co., Inc., Milwaukee	545,748.25	4,422,359.76	4,968,108.01	10.99
Stevens Point Bry., Stevens Point	31,372.21	——	31,372.21	100.00
Two Rivers Bev. Co., Two Rivers	5,547.48	——	5,547.48	100.00
Walter Brg. Co., Appleton	30,625.19	——	30,625.19	100.00
Walter Brg. Co., Eau Claire	27,391.49	881.69	28,273.18	96.89
West Bend Lithia Co., West Bend	21,269.01	5,168.92	26,437.93	80.46
Totals	2,711,951.41	11,583,910.01	14,295,861.42	18.98

* Source: Wisconsin Department of Taxation, Division of Beverage & Cigarette Taxes.

EXHIBIT 10

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1962*

Company	Barrels	Per Cent	Rank
Stroh	1,077,716	20.65	1
Pabst	149,518	(2.87)	
Pabst (Blatz)	819,868	(15.71)	
Total	969,386	18.58	2
Carling	643,708	12.33	3
E & B	262,243		
Pfeiffer	324,879		
Total	587,122	11.25	4
Drewrys	500,359	9.59	5
Schlitz	103,002		
Schlitz (Old Milwaukee)	135,380		
Total	238,382	4.57	6
Anheuser-Busch	196,352	3.76	7
Goebel	195,676	3.75	8
National	177,540	3.40	9
Falstaff	109,488	2.10	10
International	92,263	1.77	11
Bosch	88,084	1.69	12
Miller	74,535	1.43	13
Atlantic	68,796	1.32	14
Sebewaing	27,827	.53	15
Buckeye	26,735	.51	16
Hamm	14,346	.27	17
Canadian Ace	13,808	.26	18
Geyer	10,887	.21	19
Peter Hand	10,643	.20	20
Century Importers	10,535	.20	21
Independent-Milwaukee	10,242	.20	22
O'Donnell Import	10,062	.19	23
Hornell	5,983	.11	24
Burkhardt	5,302	.10	25
All Others (44)	52,898	1.01	—
Total	5,218,675		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 11

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1963*

Company	Barrels	Per Cent	Rank
Pabst	474,771	(9.15)	
Pabst (Blatz)	782,949	(15.10)	
Total Pabst	1,257,720	24.25	1
Stroh	1,006,032	19.40	2
Carling	658,362	12.69	3
Associated—E & B	232,168		
Associated—Pfeiffer	256,887		
Total Associated	489,055	9.43	4
Drewrys	460,982	8.89	5
Schlitz	110,573		
Schlitz (Old Milwaukee)	128,576		
Total Schlitz	239,149	4.61	6
Anheuser-Busch	188,764	3.64	7
National	187,660	3.62	8
Goebel	149,402	2.88	9
Bosch	79,309	1.53	10
International	78,897	1.52	11
Falstaff	78,583	1.52	12
Miller	75,645	1.46	13
Atlantic	47,587	.92	14
Sebewaing	24,829	.48	15
Buckeye	21,195	.41	16
Hamm	19,143	.37	17
Canadian Ace	18,535	.36	18
Peter Hand	12,283	.24	19
Geyer	11,645	.22	20
O'Donnell Import	11,371	.22	21
Century Importers	9,658	.19	22
Independent-Milwaukee	6,392	.12	23
Hornell	5,863	.11	24
All Others (42)	48,565	.94	—
Total	5,186,626		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 12

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1964*

Company	Barrels	Per Cent	Rank
Pabst	633,371	(11.58)	
Pabst (Blatz)	796,016	(14.54)	
Total Pabst	1,429,387	26.12	1
Stroh	1,024,362		
Stroh—Goebel	61,674		
Total Stroh	1,086,036	19.85	2
Carling	723,917	13.23	3
Associated—E & B	212,424		
Associated—Pfeiffer	245,783		
Total Associated	458,207	8.37	4
Drewrys	449,646	8.22	5
Schlitz	123,859		
Schlitz (Old Milwaukee)	126,527		
Total Schlitz	250,386	4.58	6
Anheuser-Busch	248,427	4.54	7
National	231,728	4.24	8
Miller	96,372	1.76	9
Falstaff	81,972	1.50	10
International	72,550	1.33	11
Bosch	64,588	1.18	12
Goebel	48,780	.89	13
Atlantic	40,036	.73	14
Sebewaing	21,209	.39	15
Hamm	19,912	.36	16
Buckeye	18,955	.35	17
Peter Hand	17,732	.32	18
Century Importers	15,938	.29	19
Canadian Ace	14,438	.26	20
O'Donnell Import	13,191	.24	21
Geyer	12,631	.23	22
Cumberland	9,193	.17	23
Werilemann	6,698	.12	24
Metropolis	5,777	.11	25
G. Heileman	5,521	.10	26
Old Crown	5,304	.10	27
All Others (37)	23,113	.42	—
Total	5,471,644		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

EXHIBIT 13

Sales of Beer in Michigan by All Firms Selling Over 5,000 Barrels in 1965*

Company	Barrels	Per Cent	Rank
Pabst	819,719.74	(14.85)	
Pabst (Blatz)	758,308.10	(13.73)	
Total Pabst	1,578,027.84	28.58	1
Stroh	991,098.28	(17.95)	
Stroh—Goebel	100,434.61	(1.82)	
Total Stroh	1,091,532.89	19.77	2
Carling	694,841.70	12.58	3
Drewry Ltd.	421,747.51	7.64	4
Associated—E & B	163,639.18	(2.96)	
Associated—Pfeiffer	204,523.25	(3.70)	
Total Associated	368,162.43	6.67	5
Anheuser-Busch	322,121.89	5.83	6
Schlitz	130,673.40	(2.37)	
Schlitz (Old Milwaukee)	127,081.98	(2.30)	
Total Schlitz	257,755.38	4.67	7
National	240,825.49	4.36	8
Miller	116,742.03	2.11	9
Falstaff	85,271.73	1.54	10
Theo. Hamm	64,122.34	1.16	11
International	60,759.76	1.10	12
Bosch	49,865.16	.90	13
Peter Hand	19,827.71	.36	14
Atlantic	16,402.96	.30	15
Buckeye	16,346.59	.30	16
Century	15,506.24	.28	17
Geyer	15,102.15	.27	18
O'Donnell Distributing	13,213.60	.24	19
Canadian Ace	10,334.50	.19	20
Michigan	9,124.55	.17	21
Cumberland	8,319.16	.15	22
Kingsbury	7,168.59	.13	23
Metropolitan	7,051.28	.13	24
Geo. Wiedemann	5,767.92	.10	25
Old Crown	5,058.19	.09	26
All Others (32)	20,405.97	.37	—
Total	5,521,405.56		

* Source: Mfgrs. & Wholesalers Department, Mich. Liquor Control Commission.

No. 404

MAR 3 0 1966

JOHN F. DAVIS, CL

In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA,

Appellant,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION,

Appellees.

On Appeal from the United States District Court for the Eastern District of Wisconsin

OBJECTIONS AND MEMORANDUM OF PABST BREWING COMPANY OPPOSING "MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE" OF BREWERS' ASSOCIATION OF AMERICA

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In the Supreme Court of the United States

OCTOBER TERM, 1965

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UNITED STATES OF AMERICA,

Appellant,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION,

Appellees.

On Appeal from the United States District Court for the Eastern District of Wisconsin

OBJECTIONS OF PABST BREWING COMPANY TO MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE OF BREWERS' ASSOCIATION OF AMERICA

Pabst Brewing Company, appellee, objects to the motion for leave to file a brief *amicus curiae* of Brewers' Association of America presented herein on March 10, 1966, and moves that the Court enter an order denying said motion on the grounds that it has not been filed in compliance

with the Rules of this Court[1] and would serve no useful purpose in this appeal.

In support of its objections, Pabst Brewing Company (hereinafter referred to as "Pabst") informs the Court as follows:

1. This is a direct appeal from a final judgment of dismissal by the district court, entered October 13, 1964, sustaining Pabst's motion to dismiss the government's complaint. The motion was filed at the close of the plaintiff's case on January 28, 1964, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The district court held that the government had failed to sustain its burden of proving that the Pabst acquisition of the assets and business of Blatz Brewing Company ("Blatz") from Schenley Industries, Inc., in July of 1958 was in violation of Section 7 of the Clayton Act. Notice of Appeal was filed on December 11, 1964, and probable jurisdiction was noted on November 8, 1965. The government's brief on the merits was timely filed on March 10, 1966; the Pabst brief on the merits will be due on April 13, 1966, with oral argument to follow during the April term of this Court.

2. Consent to the filing of a brief as *amicus curiae* was requested by counsel for Brewers' Association of America (hereinafter referred to as "applicant") but was refused by counsel for Pabst which was confirmed by letter on February 14, 1966. This Court's Rule 42(3) provides that when consent to filing of a brief is refused, "a motion for leave to file may timely be presented to the court." Rule 42(2) requires that the brief of an *amicus curiae* on the merits must be presented within the time allowed for the filing of the brief of the party supported which contemplates that

[1] The relevant rules are set out in Appendix A hereto.

a motion for leave to file must thus be made sufficiently in advance of the time for the filing of the brief of the party supported to permit a disposition of the motion before the brief is due. In this case, the government's brief was due on March 10, 1966, and the motion for leave to file the brief *amicus curiae* should have been submitted at least twenty days prior thereto thus allowing sufficient time for filing of this opposition to the motion under Rule 35(4). Applicant made no attempt to obtain the consent of Pabst prior to February 14, 1966, and no motion for leave to file was made until the day of the actual filing of the government's brief. Since all but one of the 89 members of the applicant association were interviewed by government representatives and 19 were actually subpoenaed as government witnesses to appear at the trial, the association and its counsel were aware of the existence of this litigation, the decision of the trial court, and all subsequent steps leading to the perfection of this appeal. Jurisdiction having been noted more than four months ago, the applicant had adequate time within which to file its motion and have it determined well in advance of the deadline for filing its brief. The hardship imposed upon Pabst in this case suggests the reason for the rule. Coming near the end of the term where no extensions of time are ordinarily granted, Pabst will not know if the motion is sustained until too late to prepare and submit a brief in opposition to the *amicus* brief. At the same time Pabst must be and is preparing a brief in opposition to the government's brief on the merits. Having failed to exercise any diligence in this matter which could have prevented this hardship and simplified these proceedings, applicant's motion should be denied as not timely filed.

3. Rule 42(3) requires that the motion for leave to file shall state the nature of applicant's interest and "set forth facts or questions of law that have not been,

or reasons for believing that they will not adequately be, presented by the parties and their relevancy to the disposition of the case." Applicant's two page motion asserts the nature of the applicant's interest in the litigation, but states nothing as to what "facts or questions of law" have not been presented, their relevancy, or why any questions of fact or law will not be adequately presented by the Solicitor General as counsel for the United States. The material in the brief attached to applicant's motion, leaving aside the many errors and inaccuracies therein contained, is almost entirely outside the record and thus completely irrelevant to determining whether the trial court erred in dismissing the complaint. Nor is there any reason in fact, whether or not set forth in the motion, for believing that the Solicitor General cannot adequately present all relevant facts and questions involved to this Court. Applicant's intervention will serve no useful purpose and its motion for leave to file a brief *amicus curiae* should be denied.

4. Applicant's brief will serve no useful purpose in this appeal and is entirely irrelevant to the sole issue; *viz.*, did the trial court err in sustaining the Pabst motion to dismiss on the basis of the record below. Based almost completely on alleged facts not in the record below, applicant's brief and its contents are irrelevant, incomplete and inaccurate:

(a) Applicant's brief consists of forty pages of text and thirteen exhibits and purports to represent the interests and viewpoint of the "smaller brewers of the nation" and particularly "twenty brewers in Wisconsin" who are alleged to be directly affected by the merger of Pabst and Blatz. At the trial below,

government counsel decided shortly before trial not to call as witnesses eight Wisconsin and 11 other brewers who were listed as members of applicant's Association in Exhibit 1 attached to the brief. In fact, no witnesses were called and the government presented no testimony of any kind. Applicant's brief now attempts to introduce in this Court the testimony of its members through the arguments and assertions of its counsel which are completely unverified and untested by cross-examination and entirely outside the record. Such procedure is unfair to the trial court and contrary to established appellate principles of this Court.

(b) Applicant's Exhibits 2 through 13 on which many of the arguments in the text are based contain statistical material alleged to represent sales of beer from 1962 to 1965 by individual brewers in the United States as a whole, in Wisconsin, and in Michigan. By agreed pretrial order, no evidence was offered or admitted below concerning events occurring after December 31, 1961 (R. 114) and the government's case was concluded on January 28, 1964 before the period of the statistics for 1964 and 1965. Accordingly, none of this material was before the trial court and is completely irrelevant to this appeal. In addition, the information set forth in the exhibits is incomplete, inaccurate and misleading.

Because there will be insufficient time for Pabst to answer applicant's brief, should the Court permit it to be filed, Pabst is submitting a short memorandum herewith pointing out some of the more obvious deficiencies in said brief in more detail than outlined above.

Since the motion was not timely filed nor in compliance with other requirements of Rule 42 and for reasons set forth above and in said memorandum, Pabst respectfully requests that this Court enter an order denying the motion by Brewers' Association of America for leave to file a brief as *amicus curiae* in support of the government.

DATED: March 30, 1966.

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APPENDIX A

Rule 42 of the Rules of this Court provides in pertinent part as follows:

> "2. A brief of an amicus curiae in cases before the court on the merits may be filed only after the order of the court or when accompanied by written consent of all parties to the case and presented within the time allowed for the filing of the brief of the party supported.
>
> "3. When consent to the filing of a brief of an amicus curiae is refused by a party to the case, a motion for leave to file may timely be presented to the court. It shall concisely state the nature of the applicant's interest, set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case; and it shall in no event exceed five printed pages in length. A party served with such motion may seasonably file an objection concisely stating the reasons for withholding consent.
>
> "5. All briefs, motions, and responses, filed under this rule shall be printed; shall comply with the applicable provisions of Rules 35, 39, and 40 . . . ."

Rule 35 of the Rules of this Court provides in pertinent part:

> "4. Unless a different time for the filing of a brief in opposition is specifically authorized elsewhere in these rules, motions submitted in printed form will normally be held by the clerk for twenty days to permit the filing of forty printed copies of a brief in opposition, after which the motion and brief will be distributed to the court . . . ."

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES OF AMERICA,

Appellant,

vs.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., THE VAL CORPORATION,

Appellees.

On Appeal from the United States District Court for the Eastern District of Wisconsin.

MEMORANDUM IN SUPPORT OF OBJECTIONS OF PABST BREWING COMPANY TO "MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE" OF BREWERS' ASSOCIATION OF AMERICA

INTRODUCTION

This memorandum is submitted in support of the Pabst objections to the motion of Brewers' Association of America for leave to file a brief *amicus curiae* in support of appellant with the request that it be considered the Pabst answer to the brief attached to said motion if its filing should be permitted.

QUESTION PRESENTED

Should this Court grant the motion of Brewers' Association of America for leave to file a brief *amicus curiae* in support of the government when the brief attached to the motion is based on alleged matters which were never presented to the trial court and are also unverified, incomplete and inaccurate?

STATEMENT

The Pabst[1] acquisition of the assets and business of Blatz was made in July, 1958, after Pabst sales had declined almost 50% during the preceding six years (F.15, R.461). The complaint charged that the acquisition may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of beer in the United States, in the area comprising the three states of Wisconsin, Illinois, and Michigan, and in the state of Wisconsin alone (R. 25-26). At the time of the acquisition, Pabst ranked 11th in the sale of beer by breweries in the United States, accounting for approximately 2.67% of national beer sales, while Blatz ranked 13th and accounted for 2.04% (F.16, R.461-462).

The opinion of the court granting Pabst's motion to dismiss filed at the close of plaintiff's case pursuant to Rule 41(b) of the Federal Rules of Civil Procedure on

[1] Throughout this memorandum, the appellee Pabst Brewing Company is referred to as "Pabst"; the Brewers' Association of America is called "applicant" while Blatz Brewing Company whose assets and business Pabst acquired from appellee Schenley Industries, Inc., is denoted as "Blatz." References are to the printed record (R. .....), specific findings of the trial court (F. .....), the government brief on the merits (G.B. .....) and the applicant's brief (A.B. .....).

the ground that the plaintiff had shown no right to relief is reported at 233 F.Supp. 475 and reprinted here (R. 422-455). The court also made detailed findings of fact and conclusions of law reprinted at R.456-480.

Prior to trial, 88 of the 89 alleged members of the applicant listed in Exhibit 1 to its brief were interviewed by representatives of the government (R.64-80) and trial subpoenas were issued for 19 of them (R. 55-59). Pursuant to agreed pretrial order, each of these 19 subpoenaed witnesses furnished at Milwaukee, Wisconsin, for examination by counsel for both sides prior to trial (R. 10-16) either an affidavit or documents (R. 100-102) concerning its production and sales of beer and the profit and losses therefrom. However, shortly before the trial, the government notified the court that no witnesses would be called (R. 126) and none of the affidavits or other documents furnished by these witnesses (R.12-17) was offered in evidence by the government (R. 110). The government's evidence was completely documentary, primarily statistical evidence except for a few minor excerpts from depositions (F.58, R.479).

The court held that the plaintiff had failed to meet its burden of proving that either Wisconsin, or the combination of the three-state area of Illinois, Wisconsin, and Michigan, was a relevant section of the country within the meaning of Section 7 of the Clayton Act and that it had failed to meet its burden of proving that in the continental United States, the stipulated relevant market, the effect of the acquisition of Blatz by Pabst may be substantially to lessen competition or tend to create a monopoly in the beer industry, the stipulated line of commerce (R. 480).

Applicant's brief consists of 40 pages of arguments and 14 pages of exhibits. The text material roams broadly over all aspects of the beer industry, uninhibitedly espousing economic and legal theories and arguments without foundation either in or outside the record. The subjects vary from such economic matters as what the brewing industry is and how it operates to the legal theory of how the merger has affected the status of competition in the state of Michigan which is not even alleged to be a relevant geographic market. Applicant rarely cites the record below, but does not hesitate to rely on material completely outside the record such as questionnaires mailed to its members (A.B.19), magazine articles (A.B.16-17), and other similar sources (A.B.15-16), the accuracy of which has never been tested under oath or by cross-examination.

Exhibits 2 through 13 attached to the brief purport to show sales of leading brewers in the United States as a whole for the years 1962 through 1965 (Exhibits 2-5); sales of individual Wisconsin brewers for the same years (Exhibits 6-9); and sales of beer in Michigan by all firms selling over 5,000 barrels in the same years (Exhibits 10-13). No such information is offered with respect to Illinois, the third state in the alleged three-state market area. Nor is any information furnished as to sales in Wisconsin by 25 breweries located outside the state but who sold 25% of the beer consumed in the state in 1961 (R. 216). None of the 1962-1965 material was in the record below; an agreed pretrial order limited evidence to acts or occurrences prior to December 31, 1961 (R. 114) and the government completed its case on January 28, 1964 before the information in some of applicant's exhibits even existed.

Much of the argument in applicant's brief is based on these 1962 to 1965 outside-the-record and unverified and untested exhibits, and the text even contains statements contrary to much of the statistical material in these exhibits. For example, at amicus brief page 27, a tabulation is set forth purporting to demonstrate that "the sales of the other Wisconsin brewers consistently decline" when Pabst sales increase (A.B.26). Headed "Decline in Sales of Local Wisconsin Brewers" the tabulation conveniently does not include Huber Brewing Company, a small Wisconsin brewer, whose sales have increased from 1962 to 1965 according to applicant's Exhibits 6 and 9 from 66,671 barrels to 111,687 barrels. Nor does it include the figures from Exhibits 6 and 9 showing increases in sales by Wisconsin breweries other than Pabst, such as Heileman, Schlitz and Miller and no figures at all are shown for the out-of-state brewers selling in Wisconsin. Additional examples of similar misstatements are included in the argument (*infra*, pp. 10-11).

Other arguments in the brief are mainly statements or assertions as to how small brewers operate (A.B. 13-14), the nature of their sales and distribution activities (A.B.14-16), admissions of their inefficiencies (A.B. 22-23), their views and opinions as to the effect of the Pabst-Blatz merger on competition (A.B.24-34) and the past and future of the beer industry in general (A.B.9-14). These are all matters which might have been covered by testimony from the witness stand either by these brewers themselves or by some experts in the field. These arguments of applicant's counsel are not substitutes for record testimony, nor should they be confused with the actual facts as they exist in the beer industry.

ARGUMENT

APPLICANT'S BRIEF WILL SERVE NO USEFUL PURPOSE IN THIS APPEAL AND ITS CONTENTS ARE IRRELEVANT, INCOMPLETE AND UNRELIABLE.

A. Counsel's theories, arguments and assertions are no substitute for record testimony. Applicant's brief attempts to establish by bland assertion many theories concerning the beer industry which, if true, should have been the subject of testimony in the lower court. Members of the applicant association, other brewers, distributors, or persons connected with the beer industry, as well as economists and other experts are the proper persons to furnish information to the trial court from the witness stand concerning matters which are argued in applicant's brief such as the nature of competition in the brewing industry (A.B. 9), competitive problems of the brewer in distribution (A.B.14) and in advertising (A.B.16), ease of entry into the brewing industry (A.B.19), the relative efficiencies of the various size brewers (A.B.22) and the status of competition in the beer industry in Wisconsin (A.B.26), Michigan (A.B.31), Illinois (A.B.34) or the United States (A.B.24).

However there was no testimony on these matters in the record below and in any event the assertions and arguments of applicant's counsel here are so inconsistent, inaccurate and unreliable as to be of no help to the Court (See *infra*, pp. 9-11). But there are also additional reasons for questioning the reliability, if not the credibility,

of the brief's arguments. Applicant purports to represent the "small brewers of the nation" and particularly the 20 brewers located in Wisconsin who are also members of the association. (A.B.2). Yet as noted above, for reasons which have never been clearly stated, in a last minute decision on the very eve of trial the government decided not to call these brewers or any other witnesses below (R.126). Thus, the testimony of these persons, now in the form of assertions and arguments of their counsel, which this Court is urged to accept as true, was deemed either so unimportant or so unreliable that it was not presented to the trial court and subjected to cross-examination under oath. Likewise, the affidavits and documents returned in response to the subpoenaes showing sales and profits of these witnesses (R.12-17) were never even offered in evidence by the government despite waiver of any objection as to their authenticity or genuineness by the defense (R.110). Certainly this Court should not be burdened with considering these unsubstantiated assertions of counsel based upon unimportant or unreliable information.

B. Applicant's theories are unsound in law and economics. The economic and legal theories which appear to emerge from the applicant's consideration of the history and growth of the beer industry (A.B.9-14, 20-24) are contrary to the basic tenets of all the antitrust laws including Section 7 of the Clayton Act. It is competition, not competitors, which Section 7 and the other antitrust

laws are designed to foster and protect. *Brown Shoe Co. v. United States,* 370 U.S. 294, 344 (1962). Yet, applicant here, while admitting that its members are "of their very nature, unable to operate as efficiently as the large brewers," (A.B.22), nevertheless complains that the growth of the beer industry from a large number of local monopolies into an ever expanding market area of effective competition (A.B.13) with more and more competitors (A.B.10-11) has resulted in the elimination of some inefficient small brewers. These brewers, applicant says, lacked the "foresight and resources" of others who "began expanding their markets outside their customary geographical area by shipping keg beer, or packaged beer to distant markets" (A.B.10) when the advent of such things as improved refrigerated transportation, hard roads, pasteurized beer, and new techniques in packages and packaging brought competition into all these local beer monopolies throughout the country. What applicant decries is not the merger of Pabst and Blatz, but the steady economic progress and growth of the beer industry. Protection is requested for its members not from mergers, but from competition, a request clearly repugnant to the avowed purpose of all antitrust laws.

While applicant professes that it does not seek to penalize efficiency, the startling statement is made at page 23 of its brief that "*the efficient Brewer who has been able to extend his operations . . . should not be allowed to minimize the extent of his injury to competition through his efficient operations . . . .*" Pabst submits that no theory of law or economics permits an inference that efficiency will injure competition, but on the contrary that the continued struggle for greater and greater efficiency, for the ability to produce and deliver better and better

goods to the consumers at lower and lower prices constitutes the lifeblood of competition. Applicant's theory of competition would turn back the clock to the days of the local monopolist; it seeks the subsidization of inefficient competitors at the expense of true competition and the public. The absurdities of applicant's theories demonstrate the wisdom of confining appellate consideration to matters of record below where they can be screened and tested under the prescribed methods of the judicial process.

C. The extra-record material offered by applicant is irrelevant, incomplete and unreliable. Exhibits 2 through 13 attached to the applicant's brief purport to be sales figures for individual brewers in the United States as a whole (Exhibits 2-5) in Wisconsin (6-9) and in Michigan (10-13) for the years 1962 through 1965. As noted above, by agreed pretrial order all evidence below was limited to acts and events prior to December 31, 1961 (R.114) and the government completed its case on January 28, 1964 (F.12, R.460). Consequently none of this 1962-1965 material was available to the trial court, is not in the record, and should not be considered by the Court in exercising its appellate function.

In addition to being outside the record, there are other obvious irrelevancies of this material. No claim has ever been made that the state of Michigan or the state of Illinois constitutes a separate geographic market. Information concerning them is only relevant as it may relate to the entire alleged three-state area of Wisconsin, Illinois, and Michigan. But no statistics at all are included for Illinois (A.B.8), so that no conclusions could be validly drawn concerning this alleged three-state area. Arguments concerning the alleged competitive situation in the individual

states of Michigan (A.B.8, 31-34) and Illinois (A.B.8, 34) are thus irrelevant.

Apart from irrelevancies, applicant's failure to include information of any sort concerning 25% of Wisconsin sales by 25 brewers located outside of Wisconsin is a shocking omission of material facts. Three of those brewers, Hamm's, Anheuser-Busch, and Drewry's, ranked second, sixth and eighth in beer sales in Wisconsin in 1961. (G.B. App. B, R. 216). Yet, applicant ignores all these important brewers in discussing the manner in which "The Acquisition Has Particularly Affected the Status of the Competition in Wisconsin" (A.B.26-30).

In addition to the mistaken and misleading assertions concerning the tabulation on page 27 which were discussed in the Statement (*supra,* p. 5), the following additional examples of such assertions contained in this Wisconsin section of the brief demonstrate its unreliability and constitute additional reasons for denial of leave to file:

1. At page 28, applicant states that for the year 1962 there were 29 brewing companies "operating within the state of Wisconsin." However, in the year 1961, the government's evidence shows that there were 54 brewing companies selling beer in Wisconsin (G.B.4). Applicant's repeated use of these words "operating within" for each of the years 1963 through 1965 (A.B. 28-30) constitutes a deliberate attempt to mislead the court by understating the number of brewers selling and competing within that state.

2. On page 28 it is said that "the largest sellers of beer within Wisconsin for 1962 were the Pabst Brewing Company, the Schlitz Brewing Company, and

the Miller Brewing Company." Applicant's Exhibit 6 shows on its face that Heileman Brewing Company sold 285,697 barrels of beer in Wisconsin in 1962 compared with Miller's 144,691. Although not in the record, Gettelman was acquired by Miller in January, 1961 according to the government (G.B. Appendix B), but even their combined sales on Exhibit 6 of 255,927 barrels were still less than Heileman's. In addition, the government evidence showed that in 1961 Hamm's Brewing Company sold 120,000 barrels more in Wisconsin than did Miller-Gettelman so that there were at least four and perhaps five brewers whose sales were larger than those of the company designated as third by applicant in its brief.

3. The brief asserts that the out-of-state beer sales of Pabst, Schlitz and Miller "makes no difference" to other Wisconsin breweries and that these out-of-state sales have no bearing on these companies' intrastate sales (A.B.28-29). The thesis is implausible enough to be almost facetious. No brewer is willing to disregard, as suggested by applicant, the sales of his product in one area, nor is the small brewer who may choose to sell only in Wisconsin unconcerned with what may be happening in other areas with respect to his other Wisconsin competitors who choose to sell in both places. A brewer's reaction to competitive situations outside a state cannot help but affect his reaction to competitive situations within a state. Interplay of supply and demand for beer is admitted by applicant to have crossed state lines and resulted in increased areas of effective competition in the beer industry since repeal of prohibition (A.B.13). No longer can any brewer operate his own little monopoly insulated from competitive factors which apply throughout the nation.

Extended citations of similar errors, misclassifications, and misinterpretations throughout applicant's brief would unduly prolong this memorandum. Suffice it to point out here that, contrary to applicant's assertions, there have not been nine small brewers who failed in Illinois between 1957 and 1966 (A.B.34), certain small brewers have been very successful in the past five years (A.B.6) and the Pabst-Blatz increase in sales has not brought about the diminishing share of local brewers in Wisconsin sales (A.B. 8-27).

Pabst submits that the foregoing examples demonstrate that the alleged factual material in applicant's brief is not only irrelevant but is unreliable. The brief serves no purpose in determining the issues of this appeal and the motion for leave to file it should be denied.

CONCLUSION.

Because applicant's motion for leave to file a brief as *amicus curiae* in support of the government was not timely presented to the Court, nor in accordance with the other requirements of this Court's Rule 42, and because the brief would serve no useful purpose in determining the issues of this appeal, the motion should be denied. The brief submitted with the motion contains almost exclusively alleged factual material which was not presented to the trial court; the allegations, arguments and theories of applicant's counsel contained therein have been shown

to be irrelevant, incomplete, inaccurate and misleading. Irrespective of the deficiencies in the motion for leave to file, the brief does not merit the consideration of this Court in determining the issue presented by this appeal.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES OF AMERICA, *Appellant*,

v.

PABST BREWING COMPANY, ET AL., *Appellees*.

Appeal From the United States District Court for the Eastern District of Wisconsin

ON MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY BREWERS' ASSOCIATION OF AMERICA, AN ILLINOIS CORPORATION

BRIEF IN OPPOSITION OF DEFENDANTS SCHENLEY INDUSTRIES, INC. AND THE VAL CORPORATION

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ON MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY BREWERS' ASSOCIATION OF AMERICA, AN ILLINOIS CORPORATION

BRIEF IN OPPOSITION OF DEFENDANTS SCHENLEY INDUSTRIES, INC. AND THE VAL CORPORATION

Schenley Industries, Inc. and The Val Corporation were made defendants in this suit only for purposes of relief (R. 28-9). Section 7 of the Clayton Act does not make the act of the seller a violation of the statute.

The Court below concluded that these defendants were not required to participate in the trial on the merits of the issue of violation (R. 29).

However, the Movant has served its Motion upon these defendants after they declined to consent to the filing of a brief *amicus curiae*. This brief is filed to record the opposition of these defendants to the Motion, for the same reasons which are set forth in the brief in opposition filed by the defendant Pabst Brewing Company.

Respectfully submitted,

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March 30, 1966

No. 404

APR 13 1966

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

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UNITED STATES OF AMERICA,

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BRIEF FOR PABST BREWING COMPANY

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Kaysen & Turner, Antitrust Policy; An Economic and Legal Analysis (1959) 37

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U.S. Bureau of the Census, Statistical Abstract of the United States (33d ed. 1962) 47

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UNITED STATES OF AMERICA,

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Appellees.

On Appeal from the United States District Court for the Eastern District of Wisconsin.

BRIEF FOR PABST BREWING COMPANY

OPINION BELOW

The opinion (R. 422) of the District Court sustaining Pabst's[1] motion to dismiss the complaint pursuant to Rule

[1] Throughout this brief appellee Pabst Brewing Company is referred to as "Pabst"; Blatz Brewing Company, the assets and business of which Pabst acquired from appellee Schenley Industries, Inc., is referred to as "Blatz." References are to the opinion (Op. ....), findings (F. ....), and conclusions (C. ....) of the trial court and the exhibits introduced by the government at trial (JX .... or GX ....) as printed in the record (R. ....) and to the government's brief on the merits (G.B. ....) or its Jurisdictional Statement (J.S. ....). Emphasis within quotations has been supplied unless otherwise noted.

41(b) of the Federal Rules of Civil Procedure at the conclusion of the government's case is reported at 233 F. Supp. 475. The final judgment, findings of fact and conclusions of law are reprinted here (R. 481, R. 456 and R. 480).

QUESTIONS PRESENTED

The ultimate question is whether the trial court erred in holding that the documentary evidence submitted by the government below, without interpretation or explanation by a single live witness, when weighed by the trial court in accordance with Rule 41(b), failed to sustain the government's burden of proving that the Pabst acquisition of Blatz was in violation of Section 7 of the Clayton Act (F. 59, R. 479).

Important subsidiary questions include:

1. Did the trial court err in holding that the government failed to sustain its burden of proving:

   (a) That either Wisconsin or the three-state area, composed of Wisconsin, Illinois, and Michigan, is a relevant geographic market or section of the country in which to determine the probable effect of the merger; and

   (b) That in the continental United States (the stipulated relevant geographic market) the effect of the acquisition might be substantially to lessen competition or to tend to create a monopoly in the production, distribution, and sale of beer?

2. Has the government shown here that the findings by the trial court are "clearly erroneous"?

RULES INVOLVED

Rules 41(b) and 52(a) of the Federal Rules of Civil Procedure provide in pertinent part:

> "Rule 41(b) . . . After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication upon the merits."

> "Rule 52(a): . . . In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58 . . . Findings of fact shall not be set aside unless clearly erroneous . . . ."

STATEMENT

I. The Issues

Pabst Brewing Company acquired the business and assets of Blatz Brewing Company on July 30, 1958 (F. 3, R. 456). At the time of the acquisition, Pabst ranked 11th in the sale of beer by breweries in the United States, accounting for approximately 2.67% of national beer sales, while Blatz ranked 13th and accounted for 2.04% (F. 16, R. 462; Op. R. 427). The complaint attacking this acquisition was filed October 1, 1959 (F. 4, R. 457). As a result of pretrial procedures, the parties agreed in advance of trial that

"[n]o evidence shall be introduced at trial as to any events occurring after December 31, 1961" (R. 114, 116), "the only line of commerce involved is the beer industry" and that "the continental United States as a whole was a relevant section of the country" (F. 5, R. 457; Op. R. 428). Left open for resolution at trial were issues as to whether the state of Wisconsin and the three states of Illinois, Wisconsin, and Michigan were relevant sections of the country and, if so, whether in these two alleged sections, or in the United States as a whole, the acquisition might substantially lessen competition or tend to monopoly (F. 6, R. 458). Pabst also asserted a "failing firm" defense to which the government took exception (F. 6, R. 458); this issue was not reached at trial (G.B. 3, n. 2).

The government's case consumed less than two trial days and consisted entirely of documents and statistics (F. 12, R. 460). Pabst then moved to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure on the ground that on the facts and the law the government had shown no right to relief, and the motion was granted. The trial judge concluded that the government had failed to meet its burden of proving (1) that Wisconsin, or the three-state area of Illinois, Wisconsin and Michigan combined, is a relevant section of the country, and (2) that in the United States, the only other area alleged by the government to be a relevant section of the country, the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in beer (C. 4, 5, R. 480).

The issues presented by this appeal thus turn entirely upon whether the trial judge was clearly erroneous in reaching these factual conclusions on the issues of relevant market and effect on competition.

II. The Failure of Proof.

The government refrained from offering at the trial significant evidence in its possession relating to factual matters now argued in its brief. The paramount contention of the government is that a violation should be found as to the state of Wisconsin. While its alternative contentions as to the national market and the alleged three-state market are preserved in footnotes, (G.B. 22, 45) it evidently hopes to sustain this appeal almost exclusively upon the basis of arguing that Wisconsin is a separate relevant market.

To establish this, it contends that significant barriers to entry exist which deprive Wisconsin consumers of the protection of actual and potential competition by out-of-state brewers. At the trial, however, the government introduced no evidence as to such barriers, although it had the best sources of reliable information, not only available to it, but actually on hand in the form of expert trade witnesses and detailed competitive and economic data.

The government subpoenaed for the trial 71 witnesses including 39 brewers, 24 beer distributors, and 8 maltsters from among 404 brewers, distributors, and maltsters interviewed by its representatives (F. 8, R. 459, Op.R. 424-7). These witnesses were represented to the court to be "industry experts" (Op.R. 425), but, on the eve of trial, the government decided to call none of them (Op.R. 426).

About three weeks before trial, in asking for permission to issue subpoenas to those of its brewer, distributor, and maltster witnesses who lived outside the 100 mile witness area, government counsel had told the trial court: "All such witnesses are believed by the plaintiff to have evidence material to the issues of this cause, and that [*sic*] the *testimony of said witnesses is necessary* to establish the

alleged violations of the charges and allegations contained in the complaint filed in the above case" (R. 123).

In its trial brief, filed two weeks before trial, the government exhorted the court to pay "close attention" to the testimony of the brewer witnesses who would "testify about the actual competitive situation in the beer industry" (Op.R. 424). Such testimony would be particularly important in a Section 7 case, the government stated, because, "The Court is called on in deciding these cases to predict the future and to do so must receive all the help it can get from industry representatives. The best source lies in *industry experts*, men long versed in the problems of breweries" (Op.R. 425).

On January 20, 1964, one week before trial, an order was entered governing the exchange of lists as to the order of witness appearances (R. 125, Op.R. 426). Three days later, however, perhaps in recognition that its witnesses would not say what government counsel thought they would say, but in any event for reasons which have never been explained satisfactorily (Op.R. 426-7), the government then abruptly changed its course and informed the court and defense counsel that "this case well lends itself to trial as a purely documentary case with no live witnesses" (R. 126). The government thus abandoned all of the witnesses who, a few days earlier, were said to be the experts whose testimony would be "necessary" to enable the trial judge to deal correctly with the complex issues before him.

In the same manner, the government dropped at the eleventh hour highly material documentary evidence which it had proposed to use. The trial court and the parties had evolved a discovery program from a series of pretrial conferences under which each party advised the other, not only of the names and addresses of those who were to

be called as witnesses together with a brief description of their expected testimony, but also the documentary evidence upon which it would rely (Op.R. 423-4). The government responses to the pretrial orders have been reprinted in the record (R. 55, 64) and Pabst's response is on file with the Clerk of this Court (R. 17).

The government stated that it would introduce documents of its 71 brewer, distributor and maltster witnesses relating to their production and sales, and also to the distributor witness' customers (R. 94). Trial subpoenas duces tecum (R. 98-106) were served on these witnesses, and each of them produced at Milwaukee for examination by counsel for both sides documents, or affidavits in lieu thereof, showing the production and sales of beer or malt for each state for each brewer or maltster and the profit or loss therefrom plus customer lists of distributors (R. 10-17). None of this evidence on actual economic facts of the beer industry was ever offered. The government's case consisted of stipulated statistical data, brief excerpts from Pabst director minutes, Pabst correspondence and memoranda, limited Pabst answers to interrogatories, and a few lines from the depositions of two Pabst officials, plus tables and other excerpts from trade journals and charts or graphs prepared from the statistical exhibits (Op.R. 454).

The government now urges that the trial court committed error in his findings of fact. The factual assertions upon which the government argument depends relate entirely to questions of the nature, geographical scope, and marketing facts of competition in the beer industry. These are questions upon which the facts obviously were available to the government. But the evidence was not offered. On this appeal, the government is seeking to repair the deficiencies in its proof almost entirely by unproven assertions and hypotheses outside the record. Pabst sug-

gests to the Court that to permit the government to prevail in this way would make a virtue of non-disclosure in an area of law in which the need for the best information is of the utmost importance.

For example, in its basic contention that the state of Wisconsin is a relevant market, the government states that high transportation costs are a substantial barrier to sales in Wisconsin by out-of-state brewers (G.B. 42), but admits that there is not an iota of evidence in the record showing the actual cost of beer transportation or its relationship to total costs and sales (G.B. 42). The government can hardly suggest that such evidence was unavailable, for obviously the witnesses subpoenaed by the government would have had such information at hand and could also have given it reliable interpretation. Government counsel also assert as of their own knowledge that established consumer preferences for particular brands of beer are a major factor in making entry by out-of-state sellers difficult (G.B. 39). Again, there is no evidence whatever to support this theory. And again, no persons could be better qualified to testify on this subject for or against the government's theory than the expert trade witnesses called, but not produced, by the government.

The government argues that small variations in "producer" prices for beer in different states show that the state of Wisconsin is a separate market (G.B. 38), yet the trial judge called attention in his findings to the limitation of record price information to only Pabst and Blatz prices for a single size and type of package (F. 29, R. 467). The price information was in the government's possession; numerous witnesses were available to interpret it; none were called. The government argues generally that the beer industry is characterized by localized markets. As

will be shown, the record evidence actually shows the contrary. Yet the government excluded all testimony on the subject and refrained from offering complete statistical evidence in its possession with respect to the geographical extent and volume of sales in all parts of the country by the various brewers, large and small, who were ready to testify.

The trial court studiously refrained from indulging in presumptions unfavorable to the government despite the government's broken promise to assist it with live witnesses and its failure to produce other relevant evidence. But the court was entitled to do otherwise under *Interstate Circuit, Inc.* v. *United States,* 306 U.S. 208 (1939), where this Court said:

> "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. . . . Silence then becomes evidence of the most convincing character." (306 U.S. at 226)

III. The Facts

The evidence produced by the government fails to sustain its contentions on any of the disputed issues; actually, what these facts show is that beer is sold in a national market, that competition among brewers is growing, and the intensity of this competition is not jeopardized by either the acquisition of Blatz by Pabst or by any other development shown in the record.

A. The Brewing Industry

Probably the most important fact about present day competition in the beer industry is that there are many important sellers and no one firm is dominant. In 1961, for example, there were well over 100 firms with over 400

different brands selling beer in this country (F. 47, R. 476; GX 257, R. 406-10) and 25 of these companies each made at least 1% of national sales (F. 45, R. 475). The leader, in fact, had but 9.55% of national sales (F. 45, R. 475). Further evidence of the intensity of competition among the brewers is that between 1957 and 1961 eight of the ten top firms in 1961 changed rank at least once and six of them changed rank two or more times (F. 45, R. 472-5). Furthermore, many other brewing firms are providing increasingly vigorous competition for the industry leaders. Coors, for example, climbed from 19th to 11th rank between 1957 and 1961 while doubling its sales volume to 2,303,000 barrels and Olympia moved from 21st to 15th rank as its sales increased 40% (F. 45, R. 472-5). Conversely, since per capita beer consumption has been declining (GX 264, R. 415) and national beer output was constant prior to 1959 and increased only moderately from 1958 to 1961 (F. 44, R. 472), it is evident that certain firms have suffered sales decreases. Thus, in 1957-61 second-ranked Schlitz lost more than 250,000 barrels in annual sales volume, Stroh lost 500,000 barrels and fell in rank from 9th to 13th and Ruppert slid from 14th to 20th rank on a 22% sales decline (F. 45, R. 472-5). No evidence suggests any diminution in the vigor of competition. Rather, the picture is one of increasingly intensive competition.

While there has been a decrease, at a declining rate since 1949, in the number of breweries operating in the United States since the repeal of national prohibition in 1933, the government offered no evidence as to the reasons for such decrease (F. 48, R. 476), but some reasons are suggested by the record. Among these are the failure of national demand to return to the pre-prohibition level until 1943 as shown by the production statistics (GX 245, R. 357;

F. 44, R. 472)[2], the failure of national beer demand to increase in the 1947-58 period (F. 44, R. 472); the 20% decline in per capita beer consumption between 1945 and 1961 (GX 264, R. 415); the ever increasing importance of package beer at the expense of draft beer so that by 1961 over 80% of all beer was sold in cans and bottles (GX 260-1, R. 411-3); and cost squeezes brought about by high and increasing taxes (GX 256, R. 389-92; GX 265, R. 417-8). Furthermore, the vast changes in the national economy generally, including improvements in transportation, refrigeration, packaging and marketing obviously increased and enlarged the geographic scope of competition in beer as in other industries after World War II. Everything in the record is as consistent with the conclusion that these changes have increased the vigor of competition in the beer industry as it is with the government's charges.

The trial judge found that "there is no evidence in the record that competition in the beer industry is in any manner localized" (F. 30, R. 467) and this finding is supported by such evidence as the government has introduced.

The map opposite page 12 demonstrates the reason for the nationwide pattern of beer shipments. As is graphically demonstrated there, most states have no breweries at all or do not produce sufficient beer even to satisfy the total requirements of that particular state, assuming that all locally brewed beer was consumed within the state. The facts concerning Wisconsin will demonstrate that even in that excess production state, almost 25% of the beer consumed was imported.[3] In 1961, there were

[2]All production statistics cited herein refer to tax-paid withdrawals, the output of breweries subject to the federal excise tax (JX 1-11, R. 139-49).

[3] See Statement and Argument, pp. 14, 45, *infra*.

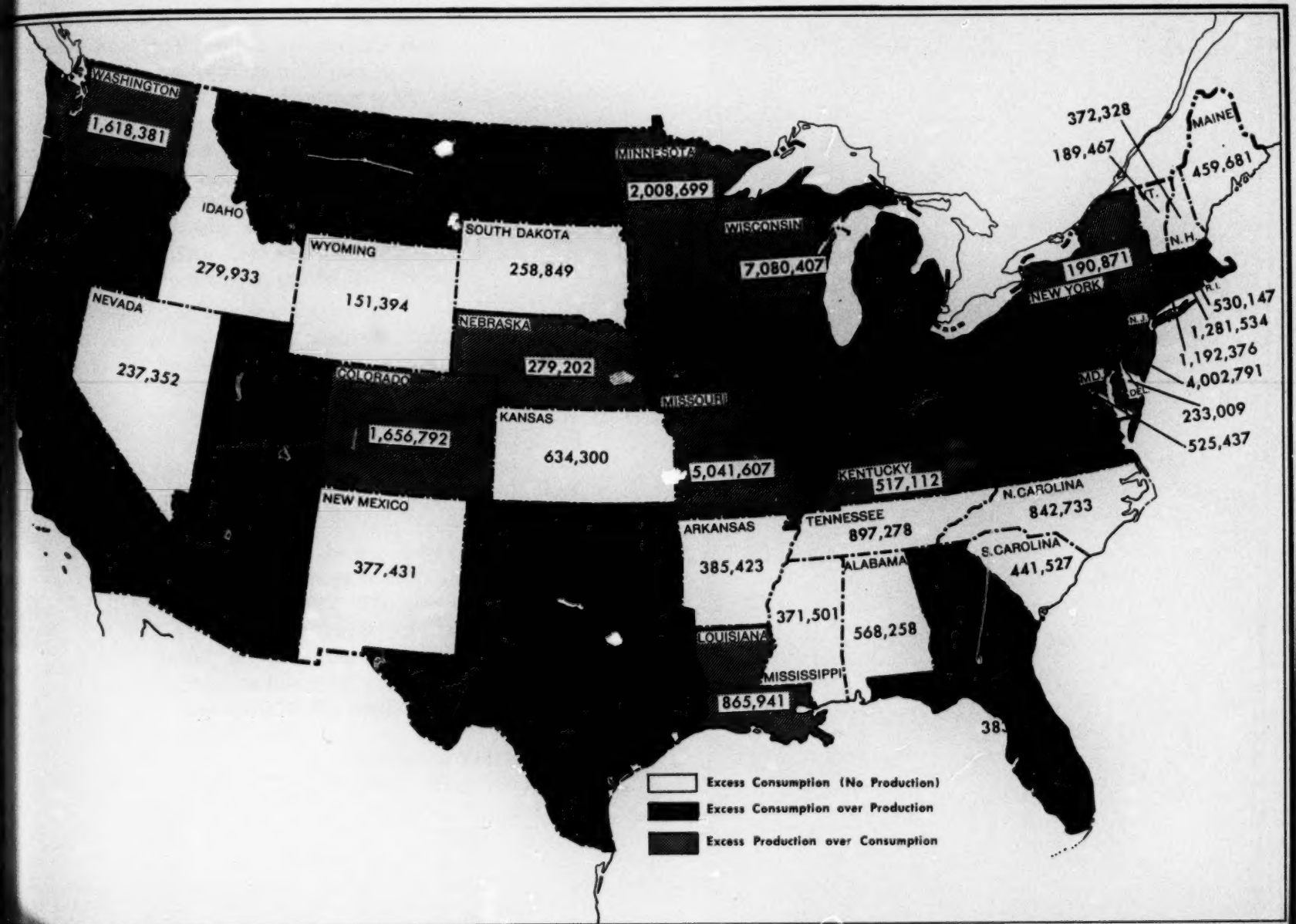
only twelve states which produced more beer than they consumed and five of these which account for roughly two-thirds of the surplus beer are located adjacent to the Mississippi River. These states necessarily had to provide all of the beer demand for the 37 beer deficit states not supplied by their own breweries so that large quantities of beer are shipped substantial distances from the brewery (JX 11, R. 149; JX 21, R. 159).

Further evidence of the nationwide beer shipping patterns shows that until 1959 Blatz was able to serve the entire nation out of its Milwaukee brewery (F. 14, R. 461) and that Pabst served 35 or 40 states from its Milwaukee and Peoria breweries (see GX 110, R. 250-1; JX 55, 56, R. 193-4; GX 115, R. 253-9).

B. Pabst and Blatz.

When it acquired Blatz on July 30, 1958, Pabst was one of the companies whose sales had been on a steady decline. From 1949 to 1958 total sales of Pabst fell from 4,336,378 barrels (5.14% of national sales) to only 2,254,001 barrels (2.67%) (F. 15, R. 461; F. 16, R. 462). In fact, the combined sales of Pabst and Blatz in 1958 were less than Pabst sales alone in 1949 and 1952 (F. 15, R. 461; F. 16, R. 462). Nevertheless, in all those years Pabst beer was sold in each of the states in the United States (F. 14, R. 461) and it had not concentrated its sales efforts in any particular geographic area. For example, in 1958 only about 15% of total Pabst sales were made in Wisconsin and in that year it sold more beer in California than in Wisconsin

PRODUCTION-CONSUMPTION RELATION
BY STATES 1961
(IN BARRELS)



Note: As used on this exhibit productio

(F. 26, R. 466; F. 25, R. 465). The total advertising expenditures in Wisconsin are roughly proportional to the percentage of sales made in Wisconsin for both Pabst and Blatz (F. 27, 28, R. 466). Contrary to the suggestion made by the government that Pabst sold many brands, and that each of them had a brand manager (G.B. 6), the complaint itself (R. 23) as well as a government exhibit (GX 110, R. 250) demonstrate that in the years just preceding the Blatz acquisition, virtually all of Pabst sales efforts were on Pabst Blue Ribbon Beer and Ale—except for some effort on a secondary brand in California.

The Milwaukee brewery is the largest of the four Pabst plants and has the greatest capacity (F. 13, R. 460). As a result, this brewery and the one in Peoria serve the large majority of states (See GX 110, R. 250; JX 56, R. 194; GX 115, R. 253-9). The record indicates that beer brewed in Milwaukee is sold in such far distant states as Maine and New Hampshire, Washington and Oregon, and Maryland in the South (GX 115, R. 253-9; JX 56-9, R. 194-7; JX 19-21, R. 157-9).

Blatz, likewise, has always been a national competitor as shown by its sales in 40 states in 1958 and in 48 or 49 states in 1959-61 (F. 14, R. 461). The government asserts (G.B. 8) that "between 31% and 46%" of Blatz sales "were consistently made" in Wisconsin. The uncontested finding of the trial judge on this point was that the percentage of total Blatz sales made in Wisconsin was declining and well below the stated level:

Year	*Percent of Total Blatz Sales Which Were Made in Wisconsin*
1957	31.36
1958	23.49
1959	19.51
1960	17.49
1961	17.02

Source: F. 26, R. 466.

C. Wisconsin.

The chart opposite page 14 shows that in recent years the state of Wisconsin has consumed only 3% to 4% of national beer output (F. 19, R. 464). Despite this relatively small potential, 54 companies, or one-third of all the firms selling beer in the nation, made 1961 sales in Wisconsin (G.B. 36). These 54, as a group, accounted for one-half of total national production in 1961 (JX 44-46, R. 182-84; JX 78, R. 216). Of these 54 firms 24 had no production facilities in Wisconsin, yet they accounted for 25% of Wisconsin sales[4] (JX 78, R. 216; GX 257, R. 403-5).

The increasing importance of non-Wisconsin-brewed beer in Wisconsin is shown by the fact that the total consumption of beer in Wisconsin increased by less than 7% between 1955 and 1961 while the amount of beer imported into the state increased by 43% during this same period (F. 19, R. 464). The plants nearest to Wisconsin of the two leading shippers into the state, Anheuser-Busch, St. Louis, and Hamm, St. Paul, are located more than 325 miles from the southeast corner of Wisconsin where much of the state's population including Milwaukee is located. Other brewing cities withing roughly the same distance of Milwaukee are Detroit, Chicago, Evansville, South Bend, Louisville and Toledo.

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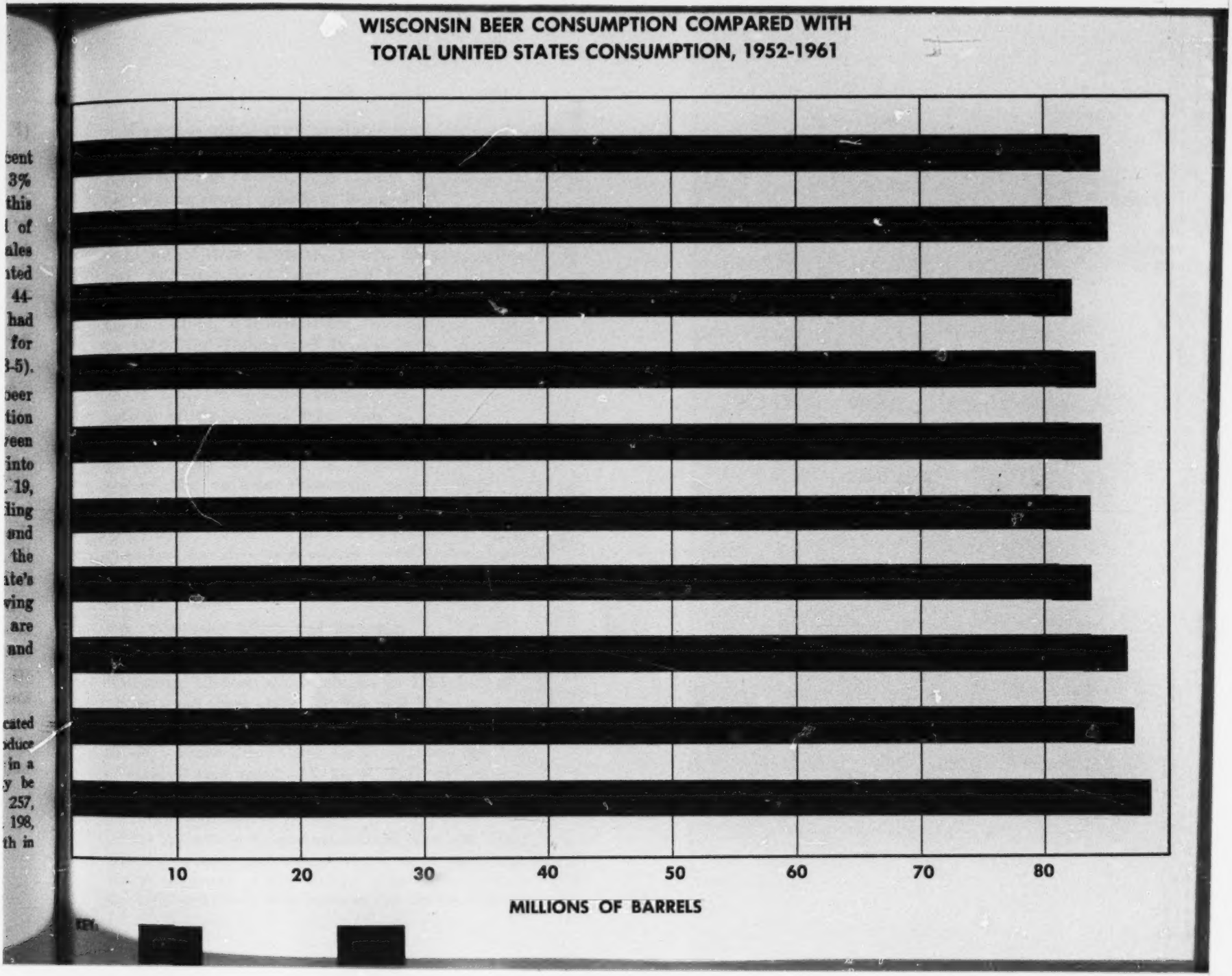
[4] "Imports" refer to sales of beer in one state by breweries located in a different state. Government trial counsel did not introduce Wisconsin import figures for 1952-1961 which were available in a stipulated tabulation, but the figures for 1955 to 1961 may be computed from JX 19-21, 60, 63, 66, 69, 72, 75, 78, and GX 257, which were in evidence and are in the record here. (R. 157-59, 198, 201, 204, 207, 210, 213, 216, 403). The tabulation is set forth in full, at p. 45 *infra*.


WISCONSIN BEER CONSUMPTION COMPARED WITH
TOTAL UNITED STATES CONSUMPTION, 1952-1961
10
20
30
40
50
60
70
80
MILLIONS OF BARRELS

Wisconsin consistently produces much more beer (over 10,000,000 barrels annually in 1947-61) (F. 18, R. 463) than it consumes; in 1957-61, 75% to 80% of Wisconsin-brewed beer was consumed outside of Wisconsin.[5]

In 1961, three of the eight leading sellers in Wisconsin were out-of-state brewers, to-wit, Hamm, ranking second, Anheuser-Busch, sixth and Drewry, eighth. These three firms had remarkable sales increases in Wisconsin in 1955-61, Anheuser-Busch increasing its sales there by 136% and Hamm and Drewry each increasing their Wisconsin sales by more than 50% (JX 60, R. 198; JX 78, R. 216). The home plant of each of these firms is outside of the alleged three-state area as well as Wisconsin (GX 257, R. 403-05). The suggestion of the government that the share of Wisconsin sales accounted for by the various Wisconsin sellers (G.B. 36) has remained constant is disproved by its own exhibit (G.B. 50-51) which shows that in 1955-61 thirteen of the twenty-three leading Wisconsin sellers listed by the government had at least a 25% variation in their percentage share of Wisconsin sales.[6]

D. Wisconsin, Illinois and Michigan.

There were eighty-six brewers selling their products in Wisconsin, Illinois and Michigan in 1961 (JX 99-100, R. 237-38); and these eighty-six accounted for about 72% of national sales in 1961 (JX 44-46, R. 182-84; JX 99-100, R. 237-38). Since these three states consume less than 16% of national beer sales (JX 21, R. 159), the sellers in the

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[5] See Argument, p. 49, *infra*.

[6] The appendix to the government brief shows, for example, that Hamm's percentage share ranged from a low of 8.09% to a high of 12.45% (a change of over 25%); Miller varied between 4.35% and 8.36% and eleven other breweries had similar variations.

three states, then, obviously compete in an area much lar
than Wisconsin, Illinois and Michigan.

There is a substantial flow of beer into and out of
three-state area. As is shown hereafter,[7] almost 25% of
beer consumed in the three states is brewed elsewhere a
conversely, about 40% of the beer brewed within Wiscon
Illinois and Michigan, is shipped beyond these states
consumption.

SUMMARY OF ARGUMENT.

I. This case is simply one in which the governmen
proof falls far short of its essential allegations, leadi
the trial court to enter judgment for the defendants. T
failures of proof were not caused by unavailability to
government of reliable evidence on the issues. On the e
of trial the government decided to refrain from ca
ing any of the numerous expert trade witnesses wh
it had subpoenaed, and to forego introduction of exhib
available to it bearing directly upon the issues of econo
fact raised by its allegations of relevant market a
competitive effect.

The trial judge had no alternative but to find, as
did, that there was no evidence establishing a smal
geographic market than the national market stipulated
the parties, and none showing that the merger wou
have any adverse competitive effect in the national ma
ket. These factual conclusions were based on a combi
tion of lack of evidence favorable to the government a
basic facts in the record supporting the position of t
defendants.

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[7] See Argument, p. 54, *infra*.

A. This appeal thus does not involve any issue of law. The only question is whether the government, having lost on the facts below, can now overturn the trial court's findings of fact. Rules 41(b) and 52(a) of the Federal Rules of Civil Procedure are applicable. The situation is the same as in any other appeal from a final judgment after trial without a jury, where findings of fact have been made by the judge. The government is not entitled to reversal unless it shows the findings to be clearly erroneous. The government brief is therefore mistaken when it indicates that the issue is whether it made a *prima facie* case, implying that doubts can be resolved in its favor, and that it can prevail on its choice of evidence even if the trial judge reasonably concludes that all of the evidence preponderates against it.

B. The method adopted by the government to attempt to overcome the trial judge's findings amounts to an attempt to try the case *de novo* in this Court on the basis of unverified factual assertions and theories having no foundation in the record. Its brief does not even directly undertake to demonstrate the invalidity of the trial judge's findings of fact, but proceeds as if there had been no findings. A series of factual assertions are made intending to establish that Wisconsin is a separate relevant market. We show by reference to the record that these key assertions, upon which this appeal depends, are based on no evidence and are unfounded and erroneous.

II. The government states that the issues on this appeal are primarily ones of "standards" for geographic market determination. This statement ignores the fact that a series of decisions of this Court have established clear tests and standards for market definition.

A. These standards were subscribed to by both sides at the trial and followed by the trial judge.

B. In brief, this Court's decisions establish that (1) relevant market determination is a necessary predicate to the determination of the competitive effect question, (2) to be accomplished by locating an economically significant area of competition, (3) through a pragmatic factual selection of a market corresponding to the commercial realities of the industry, (4) showing where the competitive effect of the merger will be direct and immediate, (5) in light of the geographic structure of supplier-customer relation, (6) thus defining the outer boundaries of an area in which those sellers operate to whom purchasers in the area can turn for alternative sources of supply.

C. It is not clear wherein the government finds these standards wanting, if at all. Its real departure from them comes not as a matter of theory, but in their application to the deficiencies of its own case. As its brief shows, what the government has done is to reverse the required order of inquiry by first selecting the market percentage it wants, and then attempting to rationalize a relevant market around it.

This process carries it to levels of argument falling far below minimum economic and legal standards. Ignoring the *Philadelphia National Bank* recognition that a market must be viewed in terms of both sellers and buyers, the government makes no attempt to deal with the *seller* dimension of the market. That is, it offers no answer for the outstanding fact of record that the Wisconsin brewers sell almost 80% of their Wisconsin production of beer outside of the State of Wisconsin.

The government deals only with the *buyer* dimension of the market, and in a manner which would involve no

compliance with "economically significant" tests. While it concedes that the correct economic standard is whether there are really substantial barriers to competition in Wisconsin from out-of-state brewers, it abandons any substance in the application of this standard. Thus, it says that the barriers need have no particular height, and may consist of nothing more than "some" cost or other disadvantage having no minimum quantity or quality. Exceptions in the form of outside sellers to whom the barriers are "non-existent" are, it says, to be ignored even though they supply 25% of the beer consumed in Wisconsin. Such an approach plainly rests upon expediency dictated by failures of proof, not upon the kind of economic substance which must supply the standards of the law.

The government approach to the Wisconsin market issue neglects completely this Court's recognition of the significance of potential competition. In its reliance on the hypotheses of counsel rather than upon market facts and the testimony of knowledgeable persons, it departs from the minimum requirements of the judicial process. Such an approach is an over-simplified treatment of the merger field, and it is wholly inappropriate in the appeal of a case in which trial counsel had at hand, but did not introduce, reliable evidence on all relevant issues.

III. The preceding discussion should not obscure the fact that even the government's low standards for this case are not met by the evidence of record.

A. On the contrary, the evidence shows that Wisconsin is not a relevant market, and that even if it were, no adverse effect on competition had been shown by any test. We believe that a discussion of this evidence is not required because the failures in the government proof already demonstrated should dispose of the appeal. How-

ever, because of the government's repeated assertions of fact without regard for either the record or the findings, we set forth in some detail the record evidence which shows quite conclusively that Wisconsin is not a relevant geographic market in the beer industry, and that even if it were, this merger would not adversely affect competition there.

B. In addition, while the government seems virtually to have abandoned its complaint allegation that the three-state area, consisting of Wisconsin, Illinois and Michigan is a relevant market, we set forth the record evidence which shows the incorrectness of such an allegation.

C. Finally, while the government also seems not to rely on its original claim that a violation in the national market has occurred, and while its brief actually undermines its trial counsel's stipulation that the entire nation is a relevant market, we conclude by calling the Court's attention to the facts of record concerning the beer industry in the nation as a whole. These facts show that the merger itself is of miniscule significance in an industry characterized by vigorous competition and lack of concentration. There is no evidence in the record of any merger in the beer industry other than the one under attack, nor is there any evidence of reasons other than natural competitive forces for the decline in the number of breweries operating in the United States between repeal of prohibition and December 31, 1961, the agreed evidence cut-off date. The rate of decline has dropped appreciably and there is no basis for inferring that the market shares of the leaders will ever reach the anticompetitive levels which concerned Congress when Section 7 was enacted.

Accordingly, no case on any alternative market thesis has been made. The trial judge was correct in his decision that the government had shown no right to relief on the facts and the law.

ARGUMENT

I. The Government's Attempt To Try The Case De Novo In This Court On The Basis Of Unverified Assertions And Theories Of Government Counsel Should Be Rejected.

The issues in this case are whether the trial court erred in finding (a) that neither Wisconsin nor the alleged three-state area had been shown to be relevant markets, and (b) that the effect on competition required by Section 7 of the Clayton Act had not been shown in the agreed relevant national market. The government brief states that these issues are "primarily ones of standards rather than of fact" (G.B. 13). This substitution of words should not operate to conceal the fact that the government itself does not claim that any substantial question of law is presented on this appeal. Further, to the extent that its use of the word, "standards," is meant to signify that its brief does not constitute a direct assault upon key basic findings of fact, we cannot agree. When the government brief finally comes to grips with what it considers the decisive issue of whether Wisconsin is a relevant market (G.B. 35-46), its whole position comes down to a series of flat contradictions by counsel of the trial court's basic factual findings.

Before proceeding to the argument on that issue it is important here to point out that: (a) the trial court's findings are supported by Rules 41(b) and 52(a), and must be tested as to whether they are "clearly erroneous," not as to whether the government has made a "prima facie" case; and (b) the government's contradictions of the trial court's findings are based almost entirely upon unverified assertions of fact which rest largely on nothing more than testimony by counsel, and which are directly at war with facts of record.

A. Reversal of the Trial Court Requires That the Findings of Fact be Found "Clearly Erroneous."

The government argues throughout its brief that it need only establish a *"prima facie"* case both here and in the lower court. But this approach overlooks the fact that the provisions of Rule 41(b) of the Federal Rules of Civil Procedure were applicable to the decision in the lower court, and that Rule 52(a) applies here.

The case before this Court involves no more than a situation where "the Government's evidence fell short of its allegations—a not uncommon form of litigation casualty, from which the Government is no more immune than others." *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 341 (1949).

The government made a deliberate, eleventh-hour decision in the court below—contrary to previous repeated representations to the trial judge as to what was "necessary" to prove its case (R. 123)—to present only a selection of documentary evidence, and to deny to the trial court the assistance of any witnesses, particularly the subpoenaed brewery witnesses familiar with "the actual competitive situation in the beer industry" (Op. R. 424). While the court below refrained from drawing the highly permissible inference that this was done because the testimony of these industry experts would have been damaging rather than helpful to the government,[8] it held on the basis of the documents presented that the government had not sustained its burden of proof (Op. R. 439, 441, 442).

The record makes clear that the government had not made out a *"prima facie"* case below in any sense, but in reaching his decision under Rule 41(b), the trial court was

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[8] *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 226 (1939); see Statement, p. 9, *supra*.

not required to view the evidence in the light most favorable to the plaintiff, as might be implied by the term *"prima facie,"* although he may actually have done so. Prior to 1946, a Rule 41(b) motion had been interpreted to be the equivalent of a motion for a directed verdict under Rule 50(a). This did require such a view of the evidence and the plaintiff needed only to establish a *prima facie* case to prevent a judgment against him. However, in 1946, Rule 41(b) was amended to reflect the distinction between the functions of the judge in a trial by the court and his role in a jury trial. The rule itself makes clear that upon a motion at the end of the plaintiff's case, the court is to act as "trier of the facts" and to "determine them and render judgment . . . or . . . decline to render any judgment." As the government itself recently said to this Court in another antitrust merger case:

> "On such a motion in a case being tried without a jury, the district court must weigh and evaluate all the evidence then presented and determine whether or not plaintiff's proof warrants the relief sought. (F.R. Civ. P. 41(b)); see 5 Moore's *Federal Practice* (2d ed.), pp. 1044-1046)." Jurisdictional Statement of the United States in *United States* v. *Continental Can Co.*, Docket 367, October Term, 1963, p. 6, n. 5.

Accordingly, proof of a mere *prima facie* case does not satisfy the requirements of Rule 41(b):

> ". . . the trial court was not required to deny the 41(b) motion even if the evidence, viewed in a light most favorable to the plaintiff, made a *prima facie* case. If, from the record as it stood at the close of plaintiff's case, the court was convinced that the evidence *preponderated* against Ellis, it was empowered to grant Carter's motion." *Ellis* v. *Carter,* 328 F.2d 573, 577 (9th Cir. 1964).

See also *Penn-Texas Corp.* v. *Morse,* 242 F.2d 243, 246-47 (7th Cir. 1957).

The trial court, in compliance with Rule 41(b), rendered judgment on the merits against the government under Rule 58 and made findings as required by Rule 52(a), in addition to preparing a thorough and careful opinion explaining its decision. Since the case is here on appeal, the provision of Rule 52(a) that findings of fact shall not be set aside unless clearly erroneous applies to these findings and to this decision:

> "It ought to be unnecessary to say that Rule 52 applies to appeals by the Government as well as to those by other litigants. There is no exception which permits it, even in an antitrust case, to come to this Court for what virtually amounts to a trial *de novo* on the record. . . ." *United States* v. *Yellow Cab Co.*, 338 U.S. at 341-2.

The burden of proof is on the government to "show that erroneous legal tests were applied to essential findings of fact or that the findings themselves were 'clearly erroneous' within our rulings on Rule 52(a). . . ." *United States* v. *E. I. duPont de Nemours & Co.*, 351 U.S. 377, 381 (1956). It is not a light burden, *United States* v. *Oregon Med. Soc.*, 343 U.S. 326, 339 (1952), for the Court "on the entire evidence" must be "left with the definite and firm conviction that a mistake has been committed," *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948), and it is not enough to show that "the evidence would support a conclusion either way . . . . Such a choice [by the trial judge] between two permissible views of the weight of evidence" would not warrant a holding that the trial judge was "clearly erroneous." *United States* v. *Yellow Cab Co.*, 338 U.S. at 342.[9]

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[9] These same rules apply even though the plaintiff's case has been dismissed under Rule 41(b) rather than after a jury verdict *Palmentere* v. *Campbell*, 344 F.2d 234, 237-8 (8th Cir. 1965); *O'Brien* v. *Westinghouse Electric Corp.*, 293 F.2d 1, 7-9 (3d Cir. 1961).

The government here thus must do more than try to string together a factual thesis asserted to make a minimally sufficient case without regard to the record, or rather as if there had been no record and as if the issue were one on the pleadings. It must convince this Court that the documentary evidence submitted below, unexplained by sworn testimony or other evidence, so contradicts the findings of the trial judge as to show them to be clearly wrong.

The judge below carefully considered all of the documentary evidence submitted by the government, used his judgment as to the weight to which it was entitled, and concluded that this evidence fell short of sustaining the burden of proof established for these cases by this Court. In a case arising under the Expediting Act, 15 U.S.C.A. § 29, where this Court has been deprived of the assistance of a court of appeals in sifting the facts and refining the issues, it is especially important that government counsel be held to, and not be permitted to extend in any way, the record which it presented to the trial court *United States* v. *Singer Mfg. Co.*, 374 U.S. 174, 175 (1963).

B. The Arguments, Assertions, and Theories of Government Counsel are No Substitutes for Record Evidence, and Are Contrary to Facts of Record.

Having presented its limited evidence and closed its case, the government no less than any other litigant must be restricted to the record which it presented in determining whether the decision of the trial court was correct. The government here, except by indirection, has failed to point out how any finding of the trial judge was "clearly erroneous." Nowhere in the government brief is there any citation of record evidence to contradict a finding of the trial court. Attempts are made to disparage the opinion by reliance upon assumptions (G.B. 25, 41), expectations (G.B. 36, 37), suppositions (G.B. 29), inferences (G.B. 25),

hypotheses (G.B. 37), and estimates (G.B. 31), but these cannot change the record evidence nor should they be permitted to serve as substitutes for evidence which was not presented below.

Lacking a record which will support their theory of the case, government counsel have made a series of key assertions of fact having no support in the record or in the findings. In some instances, the government brief fails to make it clear that the trial court expressly found contrary to the assertion being made. In all of the following instances, the brief makes assertions which have no real record support. If these wholly unverified departures from the facts of record are excluded by this Court, as Pabst urges they should be, it will be seen that the foundation selected by the government upon which to base its plea for reversal—the alleged relevance of Wisconsin as a separate market—disappears.

1. *The Assertion that Beer Competition Is Localized.* The trial court found: "There is no evidence in the record that competition in the beer industry is in any manner localized (as, for example, by the factor of inconvenience) or affected by the location of a brewery or that the place of production in any manner affects sales or the extent of the market area" (F. 30, R. 467). Yet, throughout its brief and without mention of this specific finding, the government says, as if it had been proved, that "the distribution of beer is localized" (G.B. 5), that the picture of competition in the beer industry which "emerges is one highlighted by local or regional competition" (G.B. 37), "that most beer sales by producers are made within the immediate area of their breweries" (G.B. 43), "that brewers consider it important for effective distribution that they have breweries proximate to their important markets" (G.B. 44), and that "a pattern holds across the nation"

in which 90% of all beer sold in a state comes from brewers in the state or from brewers just across state borders (G.B. 43).

The government contentions are not only directly contrary to the findings of the trial court, but also to the record evidence which shows that in 1958, Blatz with only a single brewery located in Wisconsin, sold beer in almost every state in the Union (F. 13, R. 460; F. 14, R. 461; JX 56, R. 194). *At least seven other Wisconsin breweries sold more beer brewed in their Wisconsin breweries outside of Wisconsin than in Wisconsin* (Pabst, 68.31%; Weber-Waukesha, 50.11%; Independent Milwaukee, 62.29%; Heileman, 67.89%; Huber, 63.52%; Fox Head, 77.09%; and Fountain, 68.51%) (JX 69, R. 207; JX 35-37, R. 173-5).[10] The record conclusively shows that overall nearly 80% of Wisconsin-brewed beer is shipped out of the state.[11] These statistics show that it is absolutely untrue to state that the distribution of beer is "localized", or that most beer sales are made close to the breweries, or that 90% of the beer is locally brewed or comes from breweries on the border, or that local or regional competition predominates.

2. *The Assertion That Transportation Costs Are A Barrier To Out-Of-State Competition.* The government asserts that "sellers who do not supply the Wisconsin area in many cases almost certainly face substantial barriers in the form of transportation costs" (G.B. 42). The government admits that it makes this assertion despite the fact "that the record in this case contains no direct evidence of such costs" (G.B. 42). Its only support for this extra-record

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[10] Likewise, breweries located in the states of Wisconsin, Illinois and Michigan, as a group, sold more beer outside than inside those three states. See Argument, pp. 54-55, *infra*.

[11] See Argument, pp. 48-49, *infra*.

assertion is a decision in another case in another court, which was subsequently reversed. If this assertion had validity any number of the proposed government witnesses could have supplied this evidence, or it could have been produced in documentary form. In this state of the record the trial court had no alternative but to find, as it did, that

> "There is no evidence in the record that competition in the beer industry is . . . . affected by the location of a brewery or that the place of production in any manner affects sales or the extent of the market area." (F. 30, R. 467).

Actually, the evidence circumstantially shows that transportation costs are anything but a substantial barrier to sales of beer in out-of-state markets. If the government theory were true, Wisconsin brewers would lose four-fifths of their business, since nearly 80% of the beer brewed in Wisconsin is shipped out of the state for consumption.[12] Likewise, Wisconsin purchasers can and do turn to non-Wisconsin suppliers for a substantial and steadily increasing part of their beer requirements, reaching one-fourth of the total in 1961.[13]

3. *The Contention That Prices Vary in Different States, and That This Shows Wisconsin To Be A Separate Market.* Serious errors are made by the government as to beer prices. The government claims that Pabst charged "a higher price for Blatz brand beer [in Wisconsin] after the acquisition than it charged for this brand in any other state" (G.B. 41, 45-66). It also asserts that "producers" prices to distributors, exclusive of freight, varied substantially depending on the distributor's location and that often prices vary as between neighboring states (G.B. 38). From

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[12] See Argument, p. 49, *infra*.

[13] See Argument, p. 45, *infra*.

these supposed basic facts, the government infers that beer competition in Wisconsin is isolated from other states. But the trial judge found that there was a lack of evidence on prices (F. 29, R. 467). And the record actually supports the opposite conclusion.

The government's errors result from misuse of the Pabst and Blatz answers to interrogatories (R. 253-71). These indicate only the Pabst and Blatz prices by state for a single package, namely, the 24/12 ounce returnable bottle. Moreover, the price data are f.o.b. only, and as indicated in the answer, are exclusive of any taxes, freight, discounts, or other allowances. Examination of the record itself discloses that by merely taking into account taxes and a discount allowed Blatz distributors in Wisconsin, the real Blatz price was actually lower in Wisconsin than it was in Alabama, Connecticut, Oklahoma, and South Carolina (R. 131-2; GX 115-6, R. 253-71; GX 256, R. 389-92).[14] Likewise, the government has not mentioned that the answer to the interrogatory showed that Pabst f.o.b. prices did not "vary" as between neighboring states, but were uniform in an area comprising Wisconsin and eight surrounding states.[15]

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[14] The Blatz price in Wisconsin was 20¢ less than Pabst (R. 131-2) or $2.11742 (GX 115, R. 259); the Wisconsin tax was .07258 (GX 256, R. 392) so the Blatz price was $2.19. Similar calculations show Blatz prices for Alabama to be $2.34, Connecticut $2.24, Oklahoma, $2.54 and South Carolina $3.17.

[15] In the following adjacent states the price of a case of 24/12-oz. returnable bottles of Pabst beer to distributors on July 30, 1958 was $2.32; Wisconsin (actually $2.31742), Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado; the price was $2.46 in Illinois, Tennessee, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana; and it was $2.43 in Michigan, Indiana, Kentucky and Ohio. (GX 115, R. 253-59).

4. *The Statement That The Identity And Shares Of Leading Brewers In Wisconsin Have Been Stable.* Additional errors are evident in the government's statement that the identity of the brewers selling to Wisconsin consumers has changed little over the seven-year period covered by the record in this case (G.B. 36), and that the shares of the sellers have remained remarkably stable (G.B. 37, 41). From this it wants the Court to conclude that the record shows the existence of barriers of some sort preventing competition in Wisconsin by out-of-state sellers (G.B. 36, 43). As to identity, it is not surprising that there was little change since, in 1961, 54 different companies representing about one-third of all breweries in the nation and accounting for half of national production had sales in Wisconsin (G.B. 4; JX 44, R. 182-83). Under these circumstances, there can be no inference of a barrier to out-of-state brewers selling in Wisconsin. Far from showing a "remarkable stability of market shares in Wisconsin over time" (G.B. 44, n. 33), the facts are that market shares have consistently changed in Wisconsin over the years and that one of the most marked changes has resulted from the increase in sales of beer in Wisconsin by out-of-state brewers, demonstrating the interstate nature of beer competition.[16] The record shows that imports of beer into Wisconsin have increased from 583,173 barrels or 18.82% of Wisconsin consumption in 1955 to 836,907 barrels or 25.34% in 1961.

5. *The Assertion That Only A Few Brewers Compete For The Business Of Particular Consumers In a State.* The government states that "the patronage of the beer consumers of a particular State is typically contested by relatively few of the nation's brewers," and suggests that this

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[16] See Statement, pp. 14-5, *supra;* Argument, pp. 44-5, *infra.*

condition is prevalent throughout the industry (G.B. 37-38). These statements have no foundation of any kind. The sales figures by individual brewers for just the three states introduced at the trial, clearly reveal that there are many competitors and many brands in every state: 54 breweries and 132 brands in Wisconsin in 1961, 52 and 140 in Illinois, and 48 and 137 in Michigan (JX 78, R. 216; JX 85, R. 223; JX 90, R. 228; GX 257, R. 406-10).

Having carefully picked and chosen its evidence and limited the case to documents which are mainly stipulated statistics, the government should not now be permitted to introduce additional evidence in this Court by way of assertion and argument of counsel contradicted by record evidence.

II. The Standards of Proof of Relevant Geographic Market Are Well-Established And The Only Real Issue Is As To Whether The Government Can Meet These Standards Without Proof Of The Facts They Require.

According to the government "the issues of this case . . . are primarily ones of standards rather than of fact" and "the most important issue involves the proper standard for determining when a lesser territorial area than the entire country is a proper market in which to appraise a merger's competitive impact" (G.B. 13).

But there is really no genuine issue in this Court as to the proper legal standards for such a determination. As pointed out later, these standards have been well established by the Court's past decisions—decisions upon which both parties relied in the trial court, and upon which both still rely.

It does not appear that the government is expressly challenging the opinion of the trial judge with respect to the standards which he articulated and applied in his

opinion, and it does not appear that it can do so, since it argues for the same standards as he applied. If the government is actually seeking an overruling or substantial change in any of the prior decisions of this Court on relevant market determinations, it has not so stated.

Rather, what the government argument comes down to is simply a request that the Court relax the established standards in order to let a record pass by which does not measure up to them on the facts.

A. The Trial Court Applied The Same Standards Which The Government Brief Endorses In Theory, But Does Not Follow In Practice.

The opinion of the trial judge specifically stated, and both sides agreed, "that in a proper case the effects of a merger or acquisition should be tested in a geographic submarket . . . which corresponds to the commercial realities of the beer industry or is economically significant" (Op. R. 428, 432).

The government discussion of market definition in the abstract (G.B. 25-31) comes down to a long elaboration of the same basic principle applied by the trial court—that market definition is a practical question to be dealt with as a matter of evidence of commercial realities in the actual case presented. The government cannot reasonably challenge the trial court's insistence that reliable evidence be offered to show that something less than the stipulated national market is a relevant market.

As the government says, in a passage with which we heartily agree, and which the trial judge had well in mind:

> "On the other hand, simply establishing that the merging firms were direct competitors in an area does not suffice to prove that the area is a relevant market, and its sales percentages market shares upon which

predictions of competitive conditions can be based with reasonable confidence. There must be good reason to believe that those selling there are the only sellers who provide significant direct competitive restraints upon the behavior in the area of the firm resulting from the merger. If other firms are able to compete in the area on equal terms with the present sellers, they, too, are direct competitive restraints upon the resulting firm. Market share figures which exclude them will therefore overstate the likelihood that the merger will produce or aggravate oligopolistic conditions." (G.B. 28)

To paraphrase this passage, what happened at the trial was that the government proved that Pabst and Blatz were direct competitors in Wisconsin, and it proved their combined shares there. But it proved little else. It failed to produce facts showing "good reason to believe" that Wisconsin brewers are the "only sellers who provide significant direct competitive restraints" in Wisconsin (G.B. 28). Accordingly, the market shares in Wisconsin so heavily relied upon by the government obviously "overstate the likelihood" that the merger will produce anticompetitive consequences (G.B. 28).[17]

B. The Decisions of this Court Establish Clear Standards for Market Definition, and the Government Should be Held to Them.

A series of decisions of this Court have laid down standards for geographic market definition, and the government has not expressly indicated any respect in which it finds them unclear or otherwise deficient. These standards are as follows:

1. The concept of the relevant market area is that it is an "area of effective competition" (*United States*

[17] See Argument, pp. 43-52, *infra*.

v. *E. I. duPont de Nemours & Co.*, 353 U.S. 586, 593 (1957)), which is also "economically significant." (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325, 336 (1962)).

2. Determination of the area of competition is a necessary predicate to the determination of effect on competition (*United States* v. *E. I. duPont de Nemours & Co.*, 353 U.S. at 593). It must be made before market shares are calculated, because it "is the prime factor in relation to which the ultimate question, whether the contract forecloses competition in a substantial share of the line of commerce involved, must be decided." (*Tampa Elec. Co.* v. *Nashville Co.*, 365 U.S. 320, 329 (1961)).

3. The determination of this area is to be done by a "pragmatic factual approach," not a "formal legalistic one," and the market selected must correspond to the "commercial realities of the industry." (*Brown Shoe Co.* v. *United States*, 370 U.S. at 336).

4. The plaintiff's burden of proof is to do more than merely show "where the parties to the merger do business or even where they compete." (*United States* v. *Philadelphia National Bank*, 374 U.S. at 357). The plaintiff must demonstrate "where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." (*Ibid.*)

5. This demonstration of the direct and immediate impact of the merger on competition requires an examination of "the geographic structure of supplier-customer relations." (*United States* v. *Philadelphia National Bank*, 374 U.S. at 357).

6. The method of conducting that examination is to make a "careful selection of the market area in

which the seller operates, *and to which the purchaser can practicably turn for supplies.*" (*Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 327, quoted in *United States* v. *Philadelphia National Bank*, 374 U.S. at 359) (Emphasis by the Court).

Although the government brief has not repeated these standards, it is not clear in what respect, if any, the theoretical discussion contained in the brief is designed to add anything or to subtract anything from them. The government's general summary (G.B. 26) concludes with the same point made in *Tampa Electric* and *Philadelphia National Bank* that it is necessary to determine an area composed of those sellers who provide good alternative sources of supply to the purchasers of the area. The same point is made again later (G.B. 29) in the statement that the market chosen has competitive significance "only if the sale of the product in the area constitutes a market because the purchasers there cannot readily turn to other sellers of the same product or of perfect substitutes for it." As pointed out in the next section, the real significance of the government's discussion of standards seems to be not to develop any new standards but simply to dilute the existing standards to a low level of significance.

C. What The Government Seeks Is To Avoid Meeting The Established Standards.

What the government argument comes down to is an effort to meet the Court's standards for market definition without proof. This attempt at avoidance of the rules summarized above stands out clearly in two respects.

1. *The government obviously has selected its market area on the basis of the percentage it will yield, rather than on the basis of the competitive realities.* The government brief expressly embodies the specious approach of

selecting an allegedly illegal percentage, and then attempting to rationalize it into a relevant market. The brief sets out "assuming that Wisconsin is a proper geographic market" and makes a long legal argument intended to establish a violation of law without regard for the "necessary predicate" of relevant market definition (G.B. 17-24).

Only after this irrelevant discussion does the government move to what it concedes to be the "difficult question" of whether Wisconsin is a proper market (G.B. 14).

But the teaching of the decisions of this Court is that the area selected must be shown to be "economically significant" by evidence other than the market shares which the plaintiff would like to claim. The law does not allow the government to select any state, county, city, village, hamlet, or city block or portion thereof simply because of its arithmetical attractiveness. In *Brown Shoe,* the Court carefully considered the question of market definition, both as to the vertical and horizontal aspects of the case, before proceeding to the respective questions of competitive effect (370 U.S. at 328, 339).

Likewise in *Philadelphia Bank,* the four-county area including Philadelphia was shown by affirmative evidence to be the "area of effective competition" before the Court considered the government market share statistics. The area was proved by testimonial evidence and a multitude of exhibits introduced by the plaintiff as to competition in commercial banking within and without the four-county area.[18] There was also evidence as to the amount of business

[18] One witness stated that "to a large degree" his bank's business was dependent upon customers located within a mile or two of its branches and another stated that for small business concerns the market for bank loans was a "strictly local one." (374 U.S. at 358, n. 35).

of the merging banks which occurred within the four-county area which averaged about 75% and ranged to a high of 94% for the combined total business on deposits under $10,000.[19] The Court said this evidence "reinforces the thesis that the smaller the customer, the smaller is his banking market geographically," emphasizing that it was the nature of the business, not market shares, which determined relevant geographic market.

It was only after all this evidence was introduced and on the basis of the commercial realities thus shown that the Court held the four-county area to be a "section of the country" within the meaning of Section 7 and within which the probable competitive effect could be considered and evaluated. Then—and not until then—did the market share evidence become significant for "without a minimally reasonable definition of markets, criteria based on quantitative shares become whimsy. . . ."[20]

As against this rational economic approach, it is clear that the government's mind has run in the opposite direction—*from* an attractive percentage *to* a claim of relevant

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[19] The actual percentages of each of the merging bank's business originating in the four-county area were (374 U.S. at 359, n. 36):

Type of business	P.N.B.	Girard
Personal loans	75%	70%
Real Estate loans	74%	84%
Time & savings dep.	81%	94%
Personal trusts	94%	72%
Lines of credit	41%	62%
Demand deposits	56%	77%
Demand deposits of individuals	93%	87%
Commercial and industrial loans	54%	63%

[20] Kaysen and Turner, *Antitrust Policy; an Economic and Legal Analysis* 134 (1959).

market, not from an economically sound market determination to an ascertained market share.

2. *The government plainly seeks to reduce the necessary proof to levels far below minimum economic standards—indeed to a level which would require very little proof of any kind.* While it speaks of seeking a "rational basis," an "economically meaningful market" and a "careful formulation," (G.B. 32) it applies no such tests to its own case.

Instead, it asks the Court not to approach the matter "too literally" (G.B. 30). One should ignore, it says, any sellers who might appear who are outside the defined area but who offer effective actual or potential competition in it. They should be ignored even though "precisely who and how many" of them exist "may be difficult to determine," and though for this undetermined number, the supposed barriers to entry are "nonexistent" (G.B. 31). One should not insist on an "exhaustive inquiry" into market definition, because it is "futile to expect" that more knowledge will be more useful in this inquiry than only a little obtained by a "limited" inquiry (G.B. 33).

How very "limited" the inquiry will be becomes clear when, after 35 pages of abstract discussion, the government finally comes to the merits of this case (G.B. 35). When it attempts to show that Wisconsin is a separate market the economic deficiencies of the record become starkly clear as against the standards the Court has evolved, and which the government earlier claims to follow. Thus, *Philadelphia National Bank* requires a showing, with which the government earlier in the brief agrees (G.B. 26), that this area conforms both to (1) that in which the sellers compete, and (2) within which the purchasers can practicably turn for supplies. But the record shows

nothing helpful to the government on the first point. On the contrary, it shows that many Wisconsin brewers, including the two merged companies—the sellers in the above formula—sell a large part of their Wisconsin products in many other states. Indeed, almost 80% of the beer produced there is sold outside the state.[21]

Confronted with these facts, it will be observed that the government simply abandons all effort to meet the required test for the *seller* dimension of the market.

Reduced to making only half the required case, it is confronted with the great deficiencies of the record as to the *buyer* dimension of the market. It concedes that the genuine applicable economic standard for this is whether there are substantial barriers which would prevent purchasers from turning to other than the Wisconsin brewers for supplies (G.B. 29). But since the record contains no real evidence on any of the alleged barriers, and the government must rely on extra-record hypotheses and assertions, the brief attempts to dilute the economic standard down to no real standard at all.

Thus, the government says that the alleged barriers need be of no "particular height"; they need not be "uniformly effective"; they may be "relatively low" (G.B. 34); and all that is necessary is to show *some* "cost or other disadvantages" (G.B. 33) or "*some* leeway to price" (G.B. 34) for existing sellers as against outside competitors. But what is the economic or legal significance of barriers having no ascertained height, and which might therefore be so low as to impose no real obstacle to effective competition? How can the law be administered on the basis of an assumption of barriers having no demonstrated degree of

[21] See Argument p. 49, *infra*.

frequency, uniformity or significance, since any major gap in the barrier may be all that is needed to let through a torrent of competition? How can the existence of significant barriers be assumed merely from a showing of *some* "cost or other" disadvantage (G.B. 33), without proof of the quantum of such disadvantage when the very essence of competition is a struggle to reduce price to marginal cost, and to introduce efficiencies which will lower cost?

The government's approach on its face is one of expediency, not of compliance with modern economic discipline. In its thesis that any disadvantage, however relatively slight it might be, constitutes a barrier to competition, the government stresses minor differences, which would be relevant only under the abstract model of "perfect competition", a condition never reached in the realities of the market place and certainly not shown by the record to exist here. Obviously the law cannot be administered on this basis.

The effect of the government's argument is not only to ignore completely the "pragmatic, factual approach" required by the decisions of this Court. It also ignores significant dimensions of potential competition which have been recognized by the Court as having a vital place in the determination of markets and competitive effects in cases under Section 7 of the Clayton Act. *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651 (1964); *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964); *United States* v. *Continental Can Co.*, 378 U.S. 441 (1964). In limiting the Wisconsin market only to sales by current Wisconsin sellers, the brief ignores the potential competition of out-of-state brewers on the theory that only "an actual competitor" (G.B. 40) should be included in Wisconsin. But in *Tampa Electric*, various parts of the states of Florida and Georgia and the two states separately and

combined each were held to be too small to be the geographic market in a case where coal was the line of commerce, because there were 700 producers capable of (365 U.S. at 327, 330, 331) serving the power generating station in Tampa (365 U.S. at 330). These 700 producers operated mines in eight states from Pennsylvania to Alabama to Illinois (365 U.S. at 332) and competed throughout an area much larger than Georgia and Florida (365 U.S. at 330-33). The evidence relied upon by the Court made clear that most of the 700 *did not sell coal* in Florida and Georgia—but they "could" have done so if the opportunity presented itself (365 U.S. at 331, 332, 333). In *Tampa Electric,* the Court said:

> "We are persuaded that on the record in this case, neither peninsular Florida, nor the entire State of Florida, nor Florida and Georgia combined constituted the relevant market of effective competition. We do not believe that the pie will slice so thinly. By far the bulk of the overwhelming tonnage marketed from the same producing area as serves Tampa is sold outside of Georgia and Florida, and the producers were 'eager' to sell more coal in those States. While the relevant competitive market is not ordinarily susceptible to a 'metes and bounds' definition. *Cf. Times-Picayune Pub. Co.* v. *United States,* 345 U.S. 594, 611, it is of course the area in which respondents and the other 700 producers effectively compete." 365 U.S. at 331-32.

Moreover the government seeks to make a radical departure from established methods of making the economic proof which the law requires. In *Brown Shoe,* and *Philadelphia National Bank,* where the geographic market was in issue, there was testimony by experienced persons in the industry and other experts as to the extent of the geographic market and competition in it (370 U.S. at 340; 374 U.S. at 334, 358).

The importance of such testimony is not merely theoretical. It is to prevent the dangers of precisely the kind of presentation the government is seeking to sustain in this case, *i.e.*, a case based entirely on the adversary theorizing of counsel, as distinguished from a case based on reasonably reliable objective facts, established by the trial process under oath and with appropriate cross examination.

Pabst agrees that the simplification of antimerger cases is a desirable objective, but it is surely not an appropriate objective to simplify such cases to the extent that the minimum economic facts essential to a rational application of the law are concealed from the courts. Such an approach, which we submit would be inappropriate in any case, is doubly inappropriate in this case, where government counsel cannot possibly mean to represent to this Court that it did not have available to it at the trial all of the kinds of evidence relevant to the standards of the law.

III. Tested Under Proper Standards and Even Under the Government's Proposed Standards, There Has Been a Clear Failure of Proof on the Disputed Issues of Geographic Market and Competitive Effect.

The evidence of record fails to make a case under any standard: (1) it falls far short of meeting the tests of market definition and competitive effect established by the cases; and (2) the record does not even bear out the minimal expectations derived by the government from the facile "standards" of its own brief. To avoid the repetition which would result from separately reviewing the evidence on the key issues in the light of each set of standards, the following discussion is arranged directly under the points made by the government. Failing to meet the government's own test, the evidence *a fortiori* fails to meet proper judicial standards.

A. Wisconsin.

The evidence does not meet the government's own test for proof that Wisconsin is a separate relevant geographic market. Indeed, the evidence rather conclusively shows that the market must be far larger than Wisconsin. The government begins with a test of where the two merging companies compete (G.B. 33, 35). This test establishes that the market is national. In the merger year, 1958, the vast bulk of both Pabst (85%) and Blatz (77%) business originated *outside* of Wisconsin (F. 26, R. 466). In the same year, Pabst was sold in every state and Blatz in 40 states (F. 14, R. 461). Likewise, the percentage of total national advertising expenditures of Pabst and Blatz in Wisconsin was only proportionate to the sales of the two brands in Wisconsin (F. 27, 28, R. 466).

In *Philadelphia Bank,* the "vast bulk" (about 75%) of the business of the merging banks originated *inside* the four-county area, held to be the relevant area (374 U.S. at 359). An area here which conforms to the facts of *Philadelphia Bank, i.e.,* one in which 75% of the business of the competing firms is inside the area, would be most of the United States.

The government's second test is whether there are competitive barriers which preclude sellers outside the alleged area from providing a "fully comparable alternative source of supply" (G.B. 26), or "from competing on equal terms" (G.B. 33). In support thereof, four "factors" are noted which "suggest," according to the government, that there are barriers to effective competition by brewers not at present selling in Wisconsin. The "suggestion" is not at all harmonious with the facts.

The first "factor" asserted by the government is that only one-third of the brewers in the nation had sales in Wisconsin in 1961 (G.B. 36). But, Wisconsin accounts for

less than 4% of total United States sales (F. 19, R. 464), (see chart opposite page 14), and per capita consumption has been sharply falling there, from 29 to 25 gallons per person since World War II (GX 264, R. 415). Moreover, the Wisconsin brewers produce four times as much beer as they sell in Wisconsin.[22] Under these conditions, the fact that one-third of the nation's brewers actually sell there, suggests, indeed compels, the conclusion that the government's first factor is completely wrong.

The second "factor" relied upon by the government is likewise unsupported by the record. The government says that the identity of Wisconsin sellers changed little over the years and that the shares of Wisconsin sellers have remained stable in recent years (G.B. 36). But on the contrary, between 1952 and 1956, Blatz' share of Wisconsin sales fell from 20% to just over 12% and Pabst' share in 1958-61 (excluding Blatz) climbed by nearly 35% (JX 18-21, R. 156-59; JX 50-59, R. 188-97). Further the government's own exhibit shows that thirteen of the leading Wisconsin sellers had at least a 25% variation in market share between 1955 and 1961 (G.B. 50-51).[23]

It is especially significant that in 1955-61, big sales increases were made by brewers with no Wisconsin production facilities. In this six-year period, sales of Anheuser-Busch increased by 136%, while Drewry and Hamm each had more than 50% increases in sales volume (JX 60, R. 198; JX 78, R. 216). In fact, as shown by the table below, in 1955-61 the total sales in Wisconsin by non-Wisconsin brewers increased about 43%, while total Wisconsin consumption increased only 7% (F. 19, R. 464). The great significance of this is shown by the fact that in 1961

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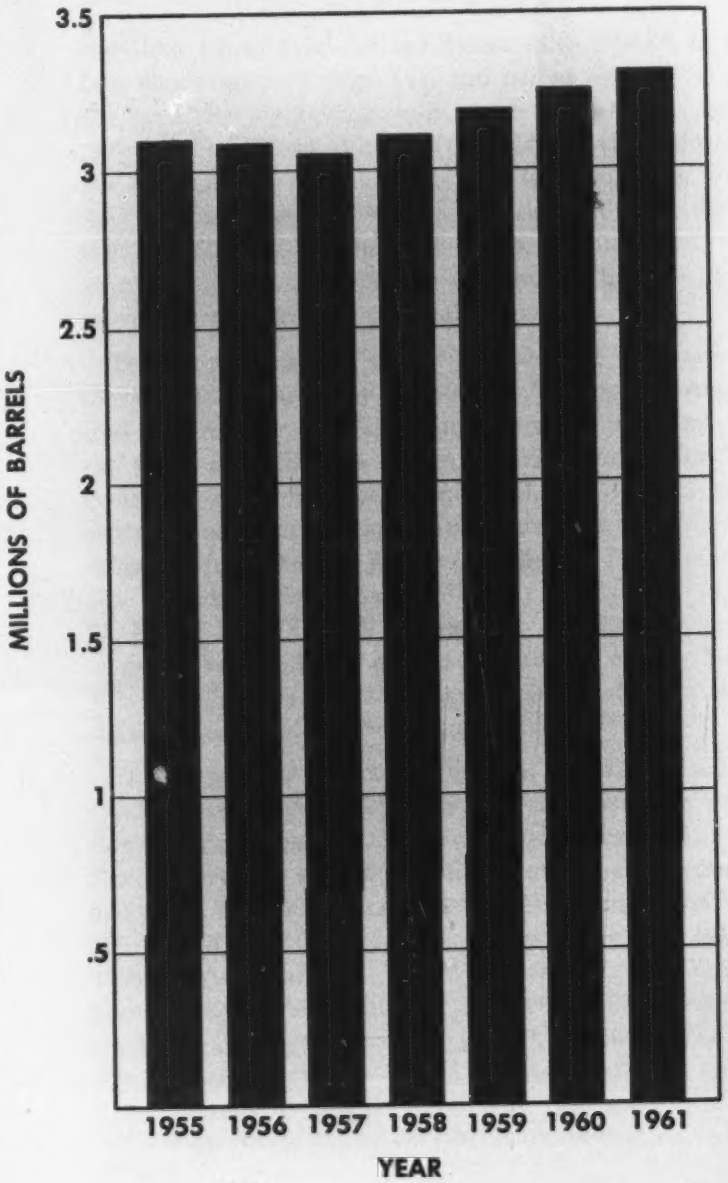
[22] The amounts of imports and surplus are shown at pp. 45 and 49, *infra*.

[23] See Statement p. 15, *supra*.

WISCONSIN BEER CONSUMPTION AND IMPORTS, 1955-1961



Source: F. 19, R. 464; JX 60-78, R. 198-216; GX 257, R. 403-405; and computations made therefrom.

these imports accounted for 25% of total Wisconsin sales, as the following table shows:

Year	Wisconsin Imports	Percent of Total Wisconsin Consumption
1955	583,173	18.81
1956	650,863	21.03
1957	694,750	22.65
1958	746,874	23.99
1959	788,103	24.64
1960	828,485	25.36
1961	836,907	25.34

Source: F. 19, R. 464; JX 60-78, R. 198-216; GX 257, R. 402-05; and computations made therefrom.

The increasing importance of imports into Wisconsin is illustrated by the chart opposite page 45.

These facts show that beer purchasers in Wisconsin can and readily do turn for beer to out-of-state as well as to local brewers. This rapidly increasing volume of Wisconsin sales by non-Wisconsin brewers is reliable evidence—in contrast to the government's contrary, unverified assertions—that other non-Wisconsin brewers could, if they elected, sell substantial quantities of their product within Wisconsin.

The government implies that one leading non-Wisconsin importer, Hamm, should not be counted because it is located "just across the State line from Wisconsin" (in St. Paul, Minnesota) (G.B. 6, 43). But the bulk of Wisconsin's population is concentrated in Milwaukee and the surrounding area in the southeast corner of the state[24] 330 miles or more

[24]About half of the 1960 population of Wisconsin is located in the nine counties in southeastern Wisconsin including Milwaukee, Madison and points south of those two cities. Another 20% is located from Green Bay to Milwaukee, almost as far from St. Paul (County and City Data Book 1962, U.S. Dept. of Commerce, Bureau of the Census, pp. 412, 422).

away. The second most important shipper into Wisconsin, Anheuser-Busch, is in St. Louis, 367 miles away from Milwaukee. If brewers in these two cities are capable of shipping increasing quantities into Wisconsin, other out-of-state brewers obviously can do the same. Brewers from Chicago, Detroit, Evansville, Louisville, Ft. Wayne, and South Bend can compete with the Wisconsin brewers in Wisconsin just as they can and do compete with them throughout the intervening area where many of the Wisconsin brewers also sell.

Taken together, these facts not only demonstrate the complete invalidity of the stable share contention, they also demonstrate that many non-Wisconsin brewers are, and others could be, in competition with Wisconsin-based brewers and to such a degree as to demonstrate convincingly that the area of effective competition extends throughout a huge geographic area in which numerous sellers effectively compete, actually and potentially, as alternative sources of supply for Wisconsin consumers.

The government also offers as a third "factor" the speculation that a "pattern of local concentration . . . appears to be typical of the structure of competition throughout the beer industry," which is "highlighted by local or regional competition," and that "relatively few of the nation's brewers" contest for sales in any "particular State" (G.B. 37-38). This proposition is disputed by what has just been shown as to Wisconsin.

It is equally wrong as to sales in other states. Although the government had available, and had stipulated as to the accuracy and authenticity of, sales statistics by individual brewers for 31 additional states which showed who sold what, and where, it deliberately excluded all of this information, except as to Pabst and Blatz brands, to the three

states. Nevertheless, insight into the geographically widespread shipping pattern of beer can be gained by reference to the data in the record on Pabst and Blatz sales by states (F. 14, R. 461; F. 24, 25, R. 465). Prior to the acquisition in 1958, Blatz operated only one plant (F. 13, R. 460) and its nationwide requirements were shipped out of Milwaukee. In the years 1949-51, Blatz was shipped to each of the states in the continental United States and in 1952-58 it was shipped to no less than 37 states (F. 14, R. 461). The nine states (JX 56, R. 194) in which Blatz was not sold in 1958 accounted for only 4.52% of national population in 1960 (U.S. Bureau of Census, *Statistical Abstract of the United States* 10 (33rd ed. 1962)). In other words, Blatz was able to—and did—ship nationally out of its Milwaukee brewery for the entire period shown by the record of ten years prior to the merger.

The record also proves that Pabst has had a nationwide shipping pattern and for many years its beer has been sold in every state (F. 14, R. 461). The two Pabst plants at Peoria and Milwaukee serve nearly every state in the nation (see GX 110, R. 251; JX 56, R. 194). The Milwaukee plant alone had output in 1958 which was three times that of Pabst sales in Wisconsin, nearly 69% of the production (1,054,314 barrels) (GX 110, R. 251) being shipped beyond the state boundary for consumption. In five states located in the Southeast in 1958, Arkansas, Georgia, North Carolina, South Carolina and Virginia, Pabst brand sold a larger percentage of that state's consumption than it did of national consumption despite the fact that it has no breweries located in the area.[25]

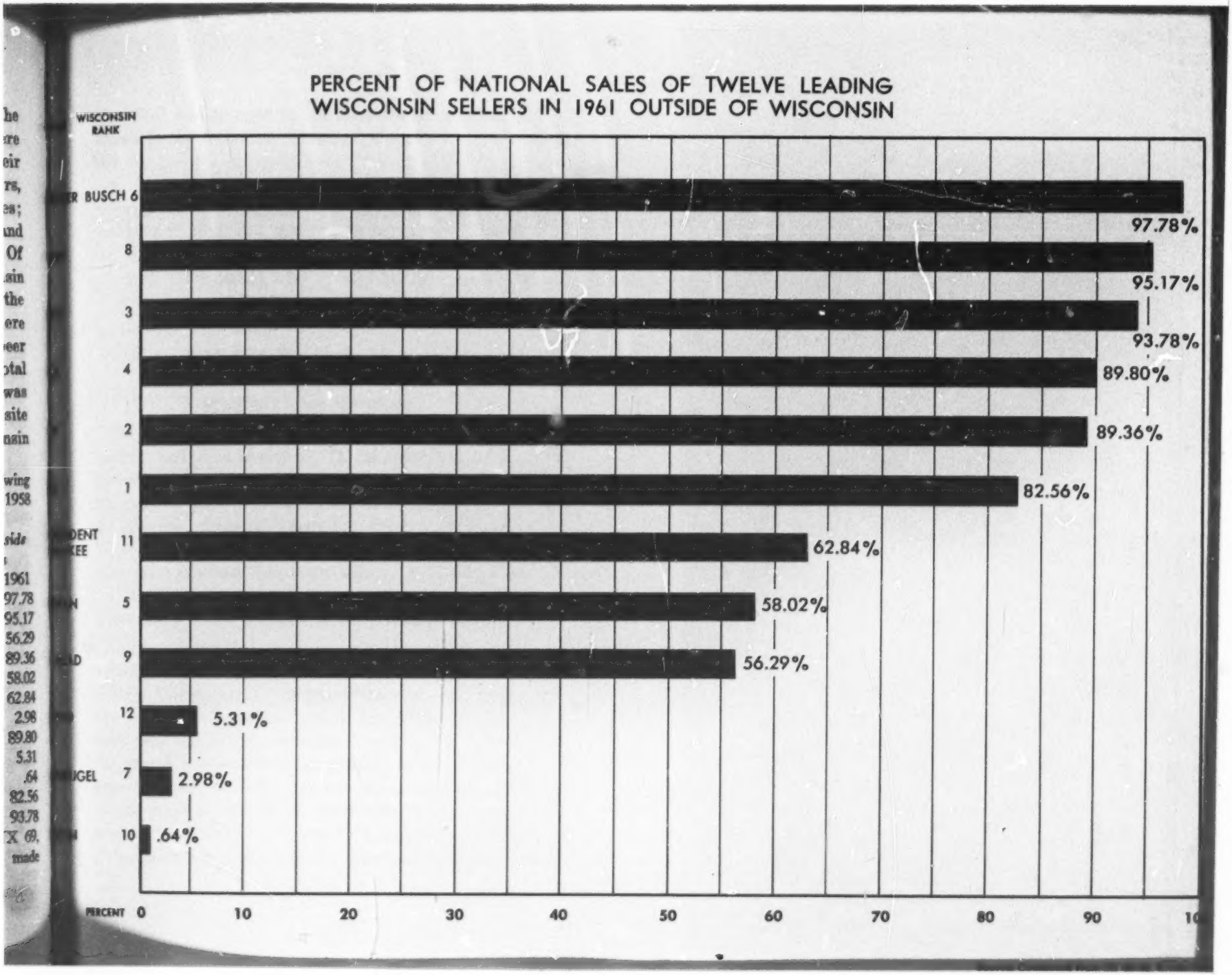
[25] Nationally, Pabst brand's market share was 2.69%; for these states its share of state consumption in Arkansas was 2.70%, Georgia 5.47%, North Carolina 6.82%, South Carolina 10.52%, and Virginia 5.18% (JX 21, R. 159; JX 59, R. 197).

While the evidence in the record does not indicate all the states, other than Wisconsin, Illinois, and Michigan, where Wisconsin brewers other than Pabst and Blatz sold their output, it does indicate that among the Wisconsin brewers, Schlitz sold 93.78% of its total 1961 output in other states; Miller, 89.80%; Heileman, 58.02%; Huber, 69.88%; and Potosi, 53.22% (JX 44-46, R. 182-84; JX 78, R. 216). Of these firms only Schlitz has a brewery outside of Wisconsin (GX 257, R. 403-05). The vast geographic extent of the competition among the Wisconsin sellers—no matter where situated—also disproves the government's thesis that beer is a locally concentrated industry. In 1961, 90% of the total output of the twelve leading sellers of Wisconsin beer was sold outside of Wisconsin, as shown in the chart opposite page 48.[26] Nearly 80% of all beer produced in Wisconsin

[26] The 12 leading Wisconsin sellers in 1961 made the following indicated percentage of their total sales outside of Wisconsin in 1958 and 1961:

Company	*Wisconsin Rank in* 1961	*% of Sales Outside of Wisconsin*	
		1958	1961
Anheuser-Busch	6	98.28	97.78
Drewry	8	95.88	95.17
Fox Head	9	77.09	56.29
Hamm	2	88.58	89.36
Heileman	5	67.89	58.02
Independent Milwaukee	11	62.29	62.84
Leinenkugel	7	3.59	2.98
Miller	4	92.98	89.80
Oconto	12	3.79	5.31
Oshkosh	10	.21	.64
Pabst	1	85.18	82.56
Schlitz	3	94.00	93.78

Source: JX 35-37, R. 173-75; JX 44-46, R. 182-84; JX 69, R. 207; JX 78, R. 216; and computations made therefrom.


PERCENT OF NATIONAL SALES OF TWELVE LEADING WISCONSIN SELLERS IN 1961 OUTSIDE OF WISCONSIN
WISCONSIN RANK
R BUSCH 6
97.78%
8
95.17%
3
93.78%
4
89.80%
2
89.36%
1
82.56%
11
62.84%
5
58.02%
9
56.29%
12
5.31%
7
2.98%
10
.64%
PERCENT
0
10
20
30
40
50
60
70
80
90

in 1957-61 was shipped out of the state for consumption as shown in the following table and the chart opposite page 50:

Year	Wisconsin Production	Wisconsin Exports	Exports as Percent of Production
1957	11,014,566	8,642,643	78.47
1958	11,034,403	8,668,322	78.56
1959	10,119,075	7,708,710	76.18
1960	10,056,894	7,618,031	75.75
1961	10,383,561	7,917,314	76.25

Source: JX 9-11, R. 147-49; JX 19-21, R. 157-59; JX 66-80, R. 204-18; GX 257, R. 403-05; and computations made therefrom.

The significance of these facts on Wisconsin exports is twofold and it is decisive: (1) the facts show that the government is mistaken in arguing that beer competition is typically localized; (2) moreover, they strongly corroborate the inference, from the heavy imports into Wisconsin, that Wisconsin consumers are in no sense dependent for supplies upon existing Wisconsin sellers. Beer flows into and out of Wisconsin in such volumes that the government's Wisconsin market thesis is literally washed away.

The fourth "factor," according to the government, is the assertion that beer "producers" often charge "substantially different prices" to distributors which "vary as between neighboring states" (G.B. 38). Although the government calls this a "phenomenon," as if it had been proved, the record is completely insufficient, to support any such generalization. Actually, the two price exhibits relate only to *one* package (24/12 oz. returnable bottles) out of the many sizes of bottles and cans sold, and they relate only to Pabst and Blatz, and not to any other seller. There is no in-

dication of the significance of this package,[27] nor can any conclusions be reached as to other producers' prices. Surely, if the evidence on price had favored the government, one of its proposed witnesses could have testified on this subject. Furthermore, as was shown in the Statement and Argument,[28] the government contentions that the Blatz price was lower in Wisconsin than in any other state and that prices generally tend to vary between states are simply contrary to the record evidence.

The government seeks corroboration for its "fourth factor" in the nature of beer marketing (G.B. 38-44). Transportation costs, it hypothesizes, "almost certainly" must impose a barrier (G.B. 42). At the same time, it admits that "the record in this case contains no direct evidence of such costs" (G.B. 42). The government makes no effort to explain how, if its transportation and distribution thesis is correct, Blatz could sell in almost every state in the union from its Wisconsin plant, almost 80% of the beer produced in Wisconsin is sold outside of Wisconsin throughout the country, and 25% of the beer consumed in Wisconsin is imported. The actual facts are that a very substantial interstate flow of beer is necessary, because many states (17 in 1961) produce no beer at all, many others (20 in 1961) consume more than they produce and the 12 remaining states have to supply some, or all, of the requirements of the 37 beer-deficit states.[29] The government specu-

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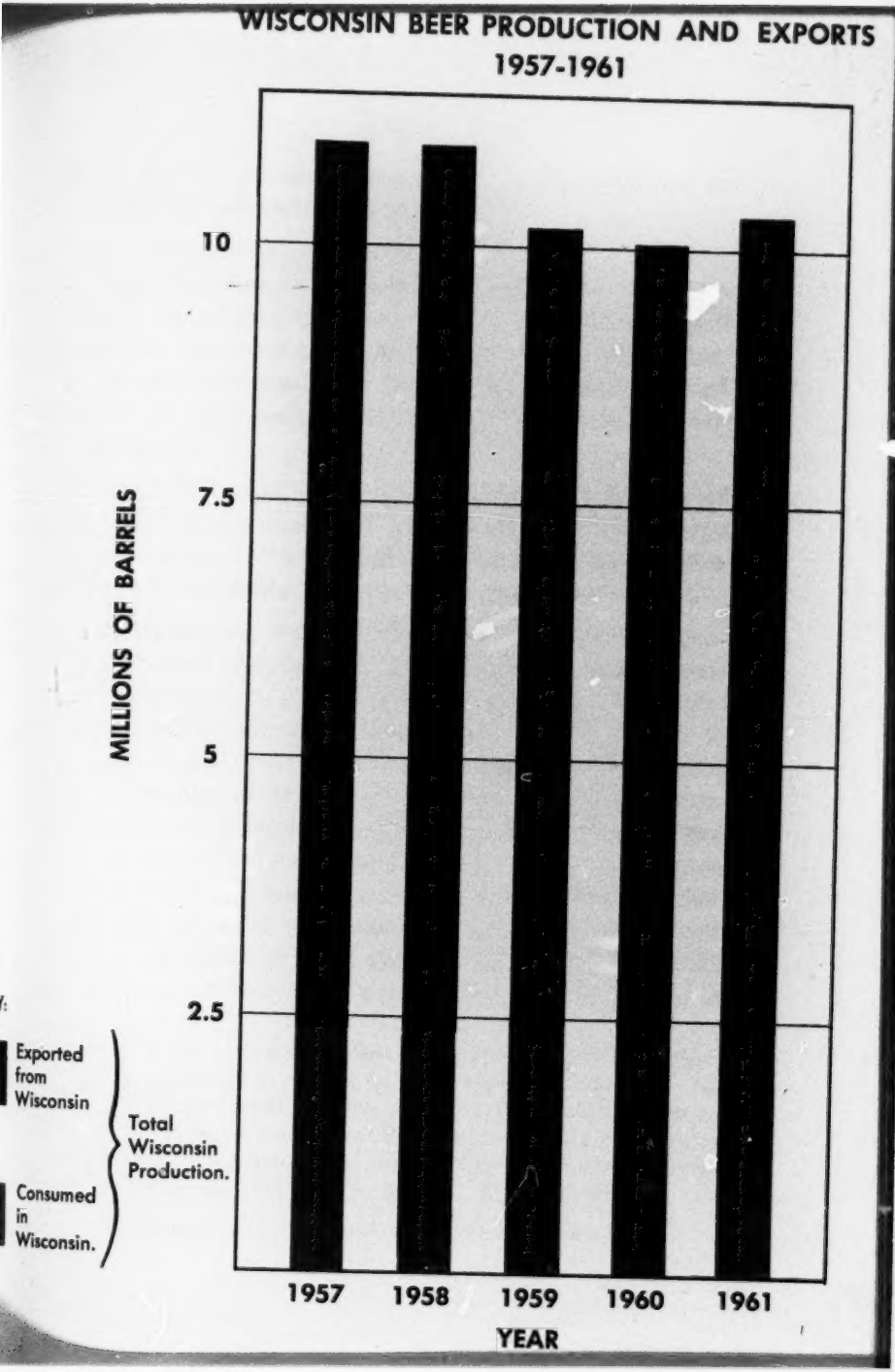
[27] Packages available include cans, bottles, returnable, and non-returnable, in sizes such as 7, 8, 12, 32, 64 ounces as well as kegs in fractions of barrels (GX 256, R. 386-88).

[28] Pages 8 and 28-29, *supra*.

[29] See Statement and Argument, pp. 14-15, 44-46, and map opposite p. 12, *supra*.


WISCONSIN BEER PRODUCTION AND EXPORTS
1957-1961
MILLIONS OF BARRELS
10
7.5
5
2.5
1957
1958
1959
1960
1961
YEAR
Exported from Wisconsin
Consumed in Wisconsin.
Total Wisconsin Production.

lations about beer distribution and transportation costs must thus be categorized as a myth.[30]

The government also suggests that consumer preferences for established brands preclude new entry into Wisconsin (G.B. 40-41). Again, there is no evidence at all to support this thesis. As noted above, several non-Wisconsin producers radically increased their Wisconsin sales in the period 1955-61 and their ability to do so suggests that others can do likewise.[31]

In light of the facts of record, and the clear failures of proof of the government's allegations, the trial judge had no alternative but to find that there was no evidence on which to segregate Wisconsin as a geographic market.

Since Wisconsin was not shown to be a relevant geographic market there was no need for the trial court to consider the question of competitive effects in the state. Even on the assumption (G.B. 17-24) that Wisconsin is an area of effective competition the government has not met its burden of proof as to competitive effect within the state. In *Philadelphia National Bank* the merger was condemned because the merging banks would have at least 30% of the business in the relevant market (374 U.S. at 364). In contrast, here the percentage share of the merging firms was only 24% in 1958 (JX 69, R. 207). After "shading" the combined market shares of

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[30]Another unproven myth is that a scheme of state-by-state regulation forces brewers to operate on a state-by-state basis (G.B. 42, n. 30). The court found that state statutes and regulations are common to all breweries and do not deter shipment among the states and not a single regulation from among all those in evidence relates solely to Wisconsin (GX 256, R. 361-402; F. 36, R. 469).

[31] See Statement and Argument, pp. 14-15, 44, *supra*.

Pabst and Blatz, the figure comparable to the 30% of *Philadelphia Bank* is less than 20% in this case.[32]

Thus, the facts here do not bring into play the presumptive illegality test established by this Court. In addition, there are other facts "in the record" which "rebut [any] inherently anticompetitive tendency" (374 U.S. at 366) of the percentages and demonstrate the absence of anticompetitive effects.

The thrust of the "additional facts" in evidence is that there are so many restraints upon any firm seeking to raise Wisconsin prices above competitive levels, that it cannot be concluded that the Wisconsin market share of Pabst-Blatz, even if relevant, is "undue" or that an anticompetitive inference can be drawn from it. The total output of all Wisconsin breweries is so great that combined Pabst-Blatz sales in Wisconsin are but a small part of it (9% in 1961) (see F. 18, R. 463; F. 24, R. 465). This huge excess production, much of it coming from such significant firms as

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[32] In *Philadelphia Bank* this Court "shaded" (reduced) the raw market shares of the merging banks because of peripheral problems of market definition (see 374 U.S. at 364, n. 40). The same adjustment here reduces the Pabst-Blatz combined share below 20%, thus less than the minimum "line of *prima facie* unlawfulness" suggested by the works of Professors Kaysen and Turner, Markham, and Stigler, cited by the Court (see 374 U.S. at 364, n. 41). Actually, as our discussion of relevant market concerning Wisconsin shows, "there is no evidence . . . that competition in the beer business is in any matter localized" (F. 30, R. 467) and entry into the Wisconsin beer business is not difficult; in *Philadelphia* the impediments were greater for in banking "convenience of location is essential" and "entry is . . . wholly a matter of governmental grace" (374 U.S. at 358, n. 44; 367). Thus, assuming that Wisconsin is a rough approximation of an area of effective competition, greater "shading" seems appropriate for beer than for banking.

Schlitz, Miller, and Heileman, acts as a check upon all Wisconsin sellers, particularly when fluctuating sales show that most producers have excess capacity (see JX 32-46, R. 170-84). Another such check comes from the increasing shipments by non-Wisconsin brewers into Wisconsin—25% of total Wisconsin sales in 1961.[33] Also, the fact that 132 different brands were sold in Wisconsin in 1961 (F. 22, R. 465) demonstrates the continuing vigorous nature of brand competition in Wisconsin. These facts demonstrate that in Wisconsin, on the improper assumption it is an area of effective competition, the Pabst-Blatz acquisition has not had and will not have anticompetitive effects.

B. Wisconsin, Illinois and Michigan.

The government also alleged below that the states of Wisconsin, Illinois and Michigan as a group constitute a section of the country in which the acquisition should be judged (F. 4, R. 457). Pabst denied this allegation (F. 6, R. 458) and the government was put to its proof (F. 7, R. 458). After trial the lower court ruled the government had failed to prove that the combination of the three states of Wisconsin, Illinois and Michigan is a relevant market area (Op. R. 441; C. 4, R. 480).[34] It is difficult to determine from the footnote reference to the three-state area in the govern-

[33] See pp. 44-45, *infra*. Entry into Wisconsin by any of the 108 non-Wisconsin sellers would require merely that they decide to sell in Wisconsin and then direct sales efforts into the state. There is no record evidence of any barrier to building distribution or creating consumer acceptance for an out-of-state brand.

[34] The trial court did not, as the government brief here states, reject these three states as a relevant market (G.B. 45, n. 34) or hold them not to be a section of the country (G.B. 11). The court's ruling was simply that the government *failed to prove* that the three states are a relevant section of the country.

ment brief whether the correctness of the ruling below is raised in this appeal.[35]

The evidence before the trial court clearly demonstrates the correctness of the ruling below—not only does the evidence fail to prove that the three states are an area of effective competition, it proves the contrary. For example, while the beer output of the three-state area is substantially greater than the consumption in these three states, nearly 25% of the beer consumed in Wisconsin, Illinois and Michigan is brewed outside of these states. Conversely, roughly 40% of the beer produced in Wisconsin, Illinois and Michigan is shipped outside of these states for consumption. These facts are illustrated by the following table:

THREE-STATE AREA

Year	Production	Exports	Exports As Percent of Production
1957	18,885,745	7,900,526	41.83
1958	17,992,328	7,237,258	40.22
1959	17,935,478	6,927,151	38.62
1960	17,991,436	6,945,723	38.61
1961	18,728,513	7,564,469	40.39

Year	Consumption	Imports	Imports As Percent of Consumption
1957	14,230,609	3,245,374	22.81
1958	14,035,503	3,222,888	22.96
1959	14,438,808	3,221,417	22.31
1960	14,609,421	3,528,106	24.15
1961	14,562,604	3,479,736	23.90

Source: JX 9-11, R. 147-149; JX 19-21, R. 157-159; JX 91-100, R. 229-238; GX 257, R. 403-405; and computations made therefrom.

[35] The issue is raised, if at all, by footnote 34 (G.B. 45).

Furthermore, the twenty leading sellers in Wisconsin, Illinois and Michigan in 1961 sold 70% of their total output in other states (JX 44-46, R. 182-84; JX 99-100, R. 237-38; and computation made therefrom). The identity of these sellers and the percentage share of the total sales of each outside Wisconsin, Illinois and Michigan are shown in the chart opposite page 56. Total national sales of the 86 firms which made sales in the three-state area in 1961 were 64,839,777 barrels, or 73% of total national production (JX 99-100, R. 237-8; JX 44-46, R. 182-4).

In 1958, 69% of Pabst sales and 37% of Blatz sales were made outside of Wisconsin, Illinois and Michigan (Pabst being sold in all states and Blatz in 40 states) and, in 1961, 58% of all Pabst Brewing Company sales were made outside of these three states (sales having been made in all states) (JX 56, 59, R. 194, 197). These percentage figures are so much greater than the percent of the total business done by the merging banks outside of the section of the country in *Philadelphia National Bank*[36] as to compel the conclusion that the three-state area is not a relevant market.

Just as in the case of Wisconsin, the record evidence not only fails to establish that the three-state area is a relevant geographic market, it clearly establishes the contrary.

C. The United States.

There is no issue as to whether the United States is an appropriate geographic market since the government alleged (F. 4, R. 457), Pabst agreed (F. 5, R. 457) and the trial court found (C. 3, R. 480) that the United States is a

[36] Only an average of about 25% of the business of each of the merging banks in *Philadelphia National Bank* was outside the section of the country there. (See 374 U.S. at 359, n. 36).

relevant section of the country for testing the competitive effect of the acquisition.[37]

1. *State of Competition in National Market.* As shown in the Statement,[38] competition among brewers in the United States is extremely vigorous. There were 162 firms selling beer in 1961, 25 different companies each accounted for at least 1% of national sales, no single firm made as much as 10% of national sales, and the top four firms had but 27.62% of the national market. There is also considerable shifting of rank among the industry leaders. The acquisition of Blatz by Pabst must be assessed in the light of this pro-competitive industry structure.

2. *Market Shares.* The extremely small percentage shares of Pabst and Blatz in the national market in the merger year (2.67% for Pabst, 2.04% for Blatz, 4.71% combined) (F. 16, R. 462)[39] certainly do not raise any presumption of illegality, the combined percentages being but a small fraction of the "undue percentage share" (30%) held to raise a presumption of illegality in *Philadelphia Bank* (374 U.S. at 363-64). In the 1949-58 period Pabst's share of national sales had fallen from 5.14% in 1949 and 4.81% in 1952 to 2.67% in 1958; indeed, the percentage share of Pabst and Blatz combined in 1958 was less than Pabst alone in 1949 or 1952 (F. 16, R. 462). The fact that in the first two full years after the merger, 1959 and 1960, combined Pabst and Blatz brand sales still did not reach the percentage of national sales of Pabst brands alone in 1949 would, according to one of the writers cited by the

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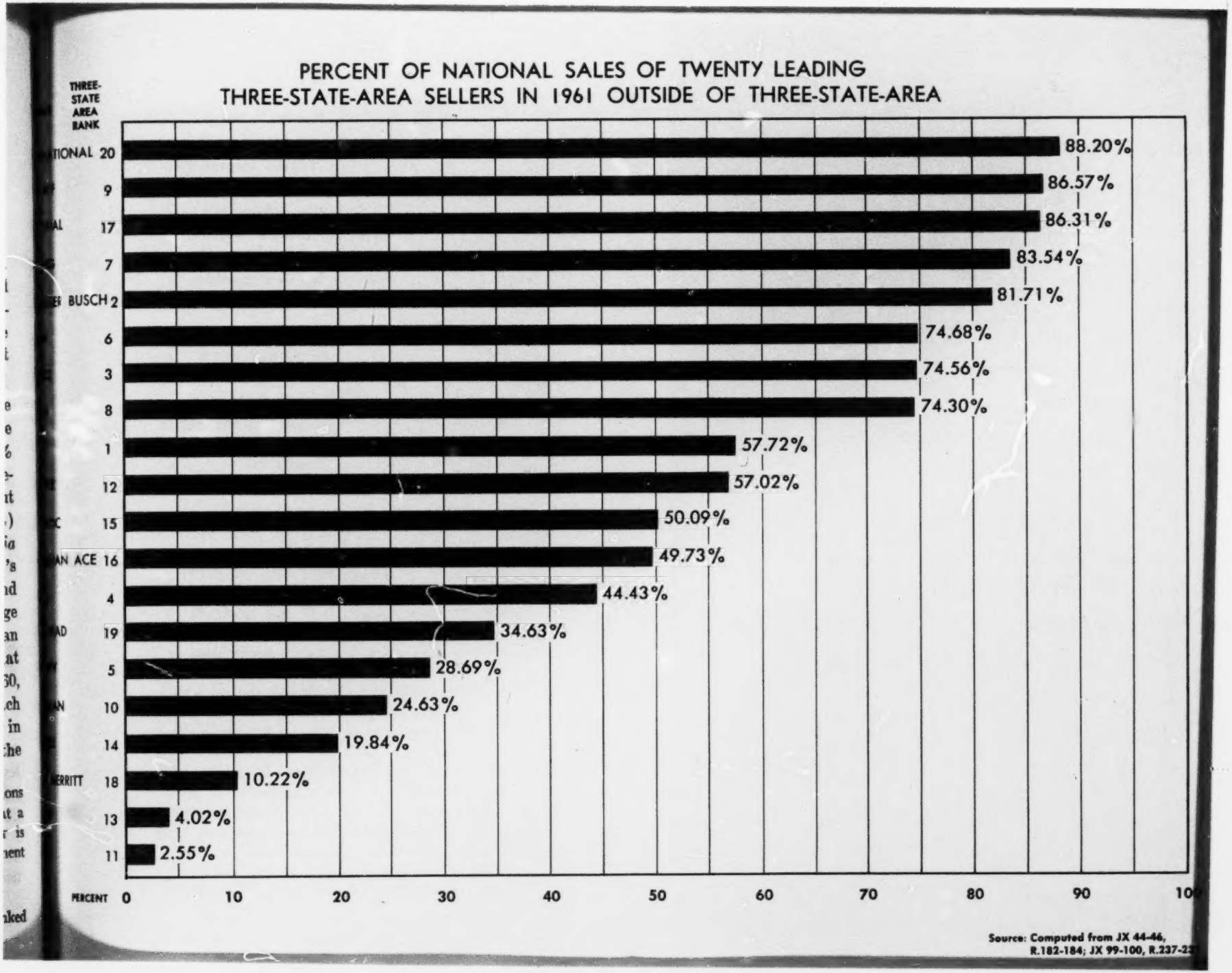
[37] Actually the government may have abandoned its contentions as to the national market, see *e.g.*, its comment (G.B. 38) that a particular "phenomenon . . . implies that the market for beer is not a national one." Similarly, see G.B. 36 where the government implies that the market for beer is not "truly national."

[38] See Statement pp. 9-12, *supra.*

[39] In the merger year, 1958, Pabst ranked 11th and Blatz ranked 13th (F. 16, R. 462).


PERCENT OF NATIONAL SALES OF TWENTY LEADING
THREE-STATE-AREA SELLERS IN 1961 OUTSIDE OF THREE-STATE-AREA
THREE-STATE AREA RANK
20
9
17
7
2
6
3
8
1
12
15
16
4
19
5
10
14
18
13
11
88.20%
86.57%
86.31%
83.54%
81.71%
74.68%
74.56%
74.30%
57.72%
57.02%
50.09%
49.73%
44.43%
34.63%
28.69%
24.63%
19.84%
10.22%
4.02%
2.55%
PERCENT
0
10
20
30
40
50
60
70
80
90
Source: Computed from JX 44-46, R.182-184; JX 99-100, R.237-23

court in *Philadelphia National Bank,* 374 U.S. at 362, 363, n. 38, 364, n. 41,[40] make the merger presumptively legal. In view of these minimal market shares the trial judge concluded that the government could not by these shares alone "shift to Pabst the burden of proving the absence of probable anticompetitive effects in the continental United States," and he therefore carefully considered all of the other record evidence related to anticompetitive effects. (Op. R. 447-55).

3. *Lack of Concentration.* The brewing industry is not concentrated. When considering the amendment to Section 7 of the Clayton Act in 1949-50, the level of concentration which concerned Congress was one where a handful of sellers control the bulk of a market's business,[41] not the

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[40] Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics,* 74 Harv. L. Rev. 226, 316 (1960).

[41] See, *e.g.,* the general remarks of Rep. Carroll ("in industry after industry three, four, five or six huge corporations dominate prices, production and employment" 95 Cong. Rec. 11493 (1949)), Rep. Douglas ("industry after industry has . . . been taken over by the Big Three, the Big Four, the Big Six, or sometimes by simply the leader," 95 Cong. Rec. 11501 (1949)), and Sen. Kefauver ("control of industries which manufacture a great many of our basic products—steel, copper, lead, and many other products . . . —is held by a handful of corporations," 96 Cong. Rec. 16450 (1950); according to Rep. Douglas the top three had 60% of steel capacity and 88% of copper refinery capacity while the leader in the lead industry accounted for 40% of production, 95 Cong. Rec. 11500 (1949)). Sen. O'Conor (96 Cong. Rec. 16435-36 (1950) pointed to shares held by the leading three companies ranging from 56% to 100% in 13 specific industries. For charts of similar data for various industries see 95 Cong. Rec. 11485, 11500-01, 11502, (1949). Taken as a whole the legislative history demonstrates a Congressional concern with those oligopolistic situations where, as described in the Senate Report, "three or four large concerns produce the entire supply" S. Rep. No. 1775, 81st Cong., 2d Sess. 8 (1950).

situation where, as here, the four leading firms accounted for little more than one fourth of national sales in 1961 (F. 49, R. 476). Furthermore, in all of the recent horizontal merger cases before this Court the share of sales of the four leading firms subsequent to the acquisition under attack has been radically greater than the very low figure in this case. In *Philadelphia National Bank,* for example, the four leaders had 78% of assets, in *United States* v. *Alcoa,* 377 U.S. 271, 278 (1964), 77% of the market, in *United States* v. *First National Bank & Trust Co. of Lexington,* 376 U.S. 665, 669 (1964), 91% of assets, and in *United States* v. *Continental Can Co.,* 378 U.S. 441, 461 (1964), the four leaders accounted for 66% of the business in the line of commerce. None of these cases remotely suggest that the small aggregate market shares of the four largest companies in the brewing industry (F. 49, R. 476) is in any manner anticompetitive or raise any presumption that it might become anticompetitive.

In each of the preceding cases there was an increase in concentration among the leading firms in the relevant market as a result of the acquisition under attack. This court in *Philadelphia Bank* specified that a 33% increase in concentration from 44% to 59% among the two leading firms was one of two factors which would in proper circumstances raise a presumption of illegality (374 U.S. at 363). Here, however, not only was there *no increase* in concentration in 1958 (the merger year) between the two leading national sellers of beer as a result of the Pabst-Blatz acquisition, but there was not even an increase among the top four. The combined percentage share of Pabst and Blatz in 1958 (4.71%) was less than the share of the fourth leading firm (Ballantine, 4.78%) in that year; the relative increase among the top five or six sellers in 1958 was about 2% (F. 45, R. 473).

4. *Trend Toward Concentration.* At trial the government sought to prove an alleged "trend toward concentration" in the brewing industry with statistical evidence showing (1) a decrease in the number of breweries, (2) an increase in national beer consumption and production,[42] and (3) an increase in the market shares of the ten and twenty-five leading brewers (Op. R. 448).

The government failed to show the significance of any of its statistics as evidence that "concentration" or a "trend thereto" has anticompetitive consequences in the market. In marked contrast to other cases where the government has shown the significance by evidence, the best the government could do here when asked about the significance of the percentage shares of the 25 leading firms was to tell the court that "we have another chart showing the top ten" (R. 134).[43] The government also

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[42] The inadequacy of this claim is illustrated by the fact that 93% of the increase in beer consumption between 1934 and 1961 occurred prior to 1947 (F. 44, R. 472). The post-1947 leveling off in consumption and consequent intensification of competition (necessarily "weeding out" the inefficient operators) actually provides the "non-merger" explanation for the decrease in number of breweries since that date.

[43] In *Philadelphia Bank*:

> "The Government's case in the District Court relied chiefly on statistical evidence bearing upon market structure and on testimony by economists and bankers to the effect that, notwithstanding the intensive governmental regulation of banking, there was a substantial area for the free play of competitive forces; that concentration of commercial banking, which the proposed merger would increase, was inimical to that free play . ." 374 U.S. at 334.

There was also testimony in *Brown Shoe* from members of the industry as well as economists as to competitive significance of statistics. *United States* v. *Brown Shoe Co.*, 179 F.Supp. 721, 733 (E.D. Mo. 1959).

argued that a mere decrease in the number of breweries constitutes by itself a trend toward concentration (R. 421). In other merger cases the government has not attempted to draw any inference of anticompetitive consequences from such unexplained statistical data alone but instead has supplied testimony to explain them. Thus, in *Philadelphia Bank* one witness testified for the government that the merged bank would have the power to affect the price and supply of available bank credit within the area of effective competition while another testified that the elimination of a large lender would significantly reduce the degree of competition because an important alternative source of credit would be eliminated (*United States* v. *Philadelphia National Bank*, 201 F.Supp. 348, 366, 367 (E.D. Pa. 1962)). No explanation, which would give meaning to the statistical evidence produced was offered here.

In its complaint the government asserted that the number of breweries operated in the United States has been declining due to "merger, consolidation and natural attrition" (R. 23), but the government did not prove that *any* breweries went out of business for reasons other than "natural attrition" (F. 48, R. 476).

In almost every horizontal merger case considered by this Court there has been evidence presented of an extensive history of mergers within the industry as well as of mergers or acquisitions by one or both parties to the combination question. In *Brown Shoe*, there was evidence of acquisitions or mergers of others in the industry, 370 U.S. at 301, 302, 345, of Brown, 370 U.S. at 302-3, 334, 345, and of Kinney, 370 U.S. at 302-3. In *Philadelphia Bank*, the acquiring bank had acquired nine formerly independent banks since 1950, the acquired bank six, and the largest seven banks in the area had increased

their combined share from 61% to 90%, largely due to acquisitions (374 U.S. at 331, 367; 201 F. Supp. at 368); and, in the United States, "of the 1,601 independent banks which thus disappeared, 1,503 . . . disappeared as the result of mergers." 374 U.S. at 325-6. Similarly in *United States* v. *Alcoa*, 377 U.S. 271, 279 (1964), and *United States* v. *Continental Can Co.*, 378 U.S. 441, 444-45 (1964), there was evidence of industry and company merger history before the court. In contrast, the trial court found that "there is no evidence in the record of any merger or acquisition in the beer industry other than the acquisition of Blatz by Pabst" (F. 48, R. 476).[44]

The most reasonable explanation in the state of this record is that the decline in the number of breweries is the result of the growing size of the geographic market for beer created by changes in the national economy.[45] As a result of this growth, it can be anticipated that the rate of decline in the number of breweries will substantially lessen and the computation of a three-year moving average confirms this fact:

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[44] The government here recognizes this deficiency of proof but its attempt to remedy it by including references to merger cases filed *after* this trial was over (G.B. 22) likewise fails since those cases are still pending, have no relation to this case and will be decided on their own facts. Nothing in or outside the record connects those cases with this case.

[45] See Statement, pp. 10-11, *supra*.

Year	Three Year Average Annual Decline in Number of Breweries[46]	Number of Operating Breweries
1952	27.67	357
1953	26	329
1954	25.33	310
1955	21.67	292
1956	16	281
1957	15.33	264
1958	13.33	252
1959	12.33	244
1960	11.67	229
1961	7.67	229

[46] Source: GX 213, R. 348; the figures are the average number of breweries (plants, not firms) going out of existence in the three-year period ending with the indicated year. There is no record evidence of the number of firms prior to 1957. For 1957-61 the number of firms has declined from 206 to 162 but at a much lower rate (177 to 162) in 1959-61 than in 1957-59 (206 to 177) (F. 47, R. 476).

There are other reasons which suggest that the decrease will stop well before the number of firms reaches an unduly small number. The decrease has already virtually halted for firms with annual sales in excess of 250,000 barrels; there were 55 such firms in 1957 and 53 in 1961 (JX 32, R. 170; JX 44, R. 182). National beer production has, in fact, begun to rise after being stagnant in the 1947-58 period (F. 44, R. 472).

With respect to market shares, the fact that the shares of the leaders are well distributed and fluctuating shows healthy and vigorous competition. There is no basis for inferring that the share of the ten leading brewers, 53% in 1961, (F. 49, R. 476) will eventually reach any anticompetitive level.

No merger which results in a combined market share for the two companies of only 4.71%, less than the share of one of them alone only a few years before, presents any of

the dangers to competition which Section 7 was enacted to prevent. To condemn a merger on so little could very well discourage rather than promote competition.

CONCLUSION.

The government lost below because the evidence it elected to present did not prove a violation of Section 7 under the standards established by this Court. Tested either by those standards, or by the government's own hypothetical assertions as to what the law should be, the government has shown no right to relief on the evidence in this case. The appellee, Pabst Brewing Company, respectfully submits that the decision of the trial judge was correct and should be affirmed.

Respectfully submitted,

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April 13, 1966

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 404

UNITED STATES OF AMERICA, APPELLANT

v.

PABST BREWING COMPANY, SCHENLEY INDUSTRIES, INC., AND THE VAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

REPLY BRIEF FOR THE UNITED STATES

On the basic issue whether the sale of beer in Wisconsin constitutes a relevant market under Section 7 of the Clayton Act, Pabst in its brief contends that there is in fact no issue of standards, but a simple failure of proof by the government (*e.g.*, Br. 31–33). Since this contention goes to the heart of the case, we deem it appropriate to reply. But, before doing so, we wish to correct the impression created by Pabst's brief that the government before trial altered its intention to call witnesses, and introduce certain

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documentary evidence, relative to the issue of the proper definition of the market.

It is quite true that the government originally planned to introduce extensive testimony by industry witnesses—brewers, maltsters, and distributors—and then decided not to. But this was not, as Pabst implies, evidence going to the definition of the relevant market. Rather, it was evidence—largely superfluous in a case of this kind under the principles of *United States* v. *Philadelphia National Bank,* 374 U.S. 321—relating to the competitive effects of the merger.[1] All the evidence the government deemed pertinent to the market issues of this case was introduced;[2] there was no holding back.

As mentioned at the outset, Pabst does not purport to be in disagreement with the government's market standard, the nub of which is that the sales of a product within a limited geographical area delineate an appropriate market so long as the producers who sell there are shielded from effective competition from those who do not. Yet Pabst attaches apparently controlling significance to facts which, under the government's standards, are at most neutral. One is that much of the beer produced in Wisconsin is sold elsewhere—a fact in no wise inconsistent with our theory that those brewers who have cultivated a

[1] The scheduled witnesses were to testify concerning the cancellation of beer distributorships (R. 80–86), sales losses sustained by competitors of Pabst and Blatz (R. 86–94), and losses by suppliers of malt to Blatz (R. 58–59, 94).

[2] In some instances, in the form of tabular summaries of or excerpts from documents in the government's possession.

market for their product among Wisconsin consumers have a substantial competitive advantage over those who have not. Another is that Pabst and Blatz themselves sold the greater part of their beer in States other than Wisconsin. But, again, this is a factor having little if any relevance under the standard that we have proposed and that Pabst purports to accept. The fact that Pabst and Blatz have—as we argue—a distinct market for their beer in Wisconsin surely does not preclude their having other markets elsewhere, and from the standpoint of protecting competition in Wisconsin it does not matter how much beer Blatz and Pabst sell elsewhere.

Finally, Pabst emphasizes that a substantial portion of the beer consumed in Wisconsin originates in other States. We have, of course, never suggested that the Wisconsin beer market may properly be viewed as limited to the brewers who have production facilities in the State. All brewers who sell there must be included. And our computation of market shares reflects the Wisconsin sales of all such brewers wherever located. The question is whether other producers (wherever their production facilities may be located) who do *not* sell any beer in Wisconsin should also be included. We think not, because we believe, and the record shows, that such other sellers must overcome significant economic barriers to market their beer in Wisconsin. These barriers are not absolute; but they give the existing sellers a significant margin within which they have freedom to set prices without taking account of the reactions of the outside sellers—whether or not the latter may be potential competitors. We

submit that the presence of such barriers defines an economically realistic—and legally sufficient—market, and on this most basic point we appear to be at issue with Pabst and with the district court.

Turning to the particulars of the evidence, Pabst argues that the record is barren of proof of any barriers or rigidities that make it difficult for a brewer (not previously active there) to sell in Wisconsin. It is true that there is no explicit testimony by industry witnesses or experts as to the existence of such barriers. But we think such evidence is not indispensable—and here again we are at issue with appellee upon a fundamental question of standards under Section 7. It is enough, in our view, if the evidence submitted compels the inference that the requisite barriers exist, and that is the case here.

There is, for example, ample (and, at this stage, unrebutted) [3] evidence of the importance of consumer preference, or "brand differentiation," in the marketing of beer. We review this evidence at length in our opening brief (pp. 39–42), citing to the record, and we are at a loss to understand Pabst's flat assertions (Br. 51, 53, n. 33) that no such evidence exists. The undisputed facts show that, far from being a fungible product, beer is sold on a brand basis. A producer cannot hope to be successful if he does not advertise and promote his brand (or brands) and

[3] The district court dismissed the complaint at the close of the government's case. Our basic challenge to the district court's decision is its failure to draw inferences as to the existence of a relevant market in the State of Wisconsin which we believe are compelled by the government's unrebutted evidence.

enlist a team of vigorous and effective wholesale distributors. Obviously, therefore, he cannot hope to penetrate a new area without a substantial investment in such promotional efforts to overcome loyalties to existing brands.

There is also substantial evidence that compels the conclusion that heavy transportation costs are entailed in shipping beer over long distances. Why else would Blatz's sales of beer in California increase dramatically, as they did,[4] when in 1959 Pabst began substantial brewing of Blatz beer in Pabst's California brewery? Before the merger, Blatz's sales were heavily concentrated in Wisconsin, where its single brewery was located. After the merger, as Pabst points out (Br. 13), a smaller proportion of its sales were made in Wisconsin, no doubt because its beer was now being brewed in Pabst's more widely dispersed breweries and could therefore be marketed more widely.

Pabst emphasizes that the production of beer in Wisconsin far exceeded consumption, and that numerous breweries were located within the same distance of Wisconsin as existing importers like Hamm and Anheuser-Busch (see R. 403–405). Far more significant, however, is the fact that, in the face of these conditions, the identity and market shares of the existing sellers in Wisconsin, including such importers, remained so stable throughout the six-year period covered by the record. There were no sig-

[4] From about 29,000 barrels in 1958 (R. 194) to about 81,000 barrels in 1959 (R. 195), to about 130,000 barrels in 1961 (R. 197)—an overall increase of some 450 percent after Pabst began brewing Blatz beer in its California plant (R. 251–252).

nificant exits of existing sellers or entries of new ones. And while there was—inevitably—some fluctuation in market shares (though Pabst exaggerates the amount),[5] it was far less than one would expect if the market for beer were, as Pabst claims, truly national so that the market position of any brewer in a particular State at a particular time was purely fortuitous.[6] We do not suggest that this factor alone is decisive; but it does, we think, dramatically confirm the evidence in the record which indicates that combined factors of shipping, promotional, and distributional cost give brewers who have managed to obtain a place in the Wisconsin beer market substantial competitive advantages over other brewers. Had they no such advantages, how could firms like Pabst and Blatz persistently enjoy market shares in that State far larger than their national average, why would many brewers proximate to Wisconsin not sell there, and, in the face of the State's large beer surplus, how could the identity and market shares of sellers in Wisconsin remain stable and a few out-of-State brewers

[5] Thus, Pabst states (Br. 15, n. 6) that Miller's market share varied between 4.35 and 8.36 percent, neglecting to mention that the latter figure includes 3.6 percent in sales of a competing brewer (Gettelman) acquired during the period (see Brief for the U.S., Appendix B, p. 50, n. 2).

[6] Further indication that the market for beer is not national is provided by the uncontradicted evidence that the f.o.b. prices charged by Pabst and Blatz to their distributors varied from State to State (see Brief for the U.S., p. 38 and n. 25). These admitted, often wide price variations indicate that competitive pressures are not uniform or even throughout the country, suggesting that not all members of the industry can compete with equal facility in every State.

persistently enjoy substantial such shares?' On this record, the clear answer is that the existing sellers in Wisconsin have an appreciable edge over breweries not now selling there, and we believe that the government is fully justified therefore in excluding the latter in defining the relevant market.

Respectfully submitted.

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' Thus, Blatz's sales of beer in Wisconsin were consistently greater than Pabst's although the capacity of Pabst's Milwaukee brewery was substantially greater than Blatz's (R. 246).

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SUPREME COURT OF THE UNITED STATES

No. 404.—October Term, 1965.

United States, Appellant, v. Pabst Brewing Company et al.	On Appeal From the United States District Court for the Eastern District of Wisconsin.

[June 13, 1966.]

Mr. Justice Black delivered the opinion of the Court.

In 1958 Pabst Brewing Company, the Nation's tenth largest brewer, acquired the Blatz's Brewing Company, the eighteenth largest. In 1959 the Government brought this action charging that the acquisition violated § 7 of the Clayton Act as amended by the Celler-Kefauver Anti-Merger Amendment.[1] That section makes it unlawful for one corporation engaged in commerce to acquire the stock or assets of another "where in any line of commerce in *any* section of the country, the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly." (Emphasis supplied.) The Government's complaint charged that "The effect of this acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in the United States and in various sections thereof, including the State of Wisconsin and the three-state area encompassing Wisconsin, Illinois and Michigan . . . ."[2] At the close of the Government's case, the

[1] 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18 (1964 ed.).

[2] The complaint charged that the merger violated § 7 of the Clayton Act in the following ways among others:

"(a) Actual and potential competition between Pabst and Blatz in the sale of beer has been eliminated;

[*Footnote 2 continued on p. 2*]

District Court dismissed the case under Rule 41 (b) of the Fed. Rules Civ. Proc., holding that the Government's proof had not shown that either Wisconsin or the three-state area of Wisconsin, Michigan and Illinois was a "relevant geographic market within which the probable effect of the acquisition of Blatz by Pabst should be tested." The District Court also ruled that the Government had not shown that "the effect of the acquisition . . . may be substantially to lessen competition or to tend to create a monopoly in the beer industry in the continental United States, the only relevant geographic market." 233 F. Supp. 475, 481, 488.

I.

We first take up the court's dismissal based on its conclusion that the Government failed to prove either Wisconsin or the three-state area constituted "a relevant section of the country within the meaning of Section 7." Apparently the District Court thought that in order to show a violation of § 7 it was essential for the Government to show a "relevant geographic market" in the same way the corpus delicti must be proved to establish a crime. But when the Government brings an action under § 7 it must, according to the language of the statute, prove no more than that there has been a merger between two corporations engaged in commerce and that the effect of the merger may be substantially to lessen

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"(b) Actual and potential competition generally in the sale of beer may be substantially lessened;

"(c) Blatz has been eliminated as an independent competitive factor in the production and sale of beer;

"(d) The acquisition alleged herein may enhance Pabst's competitive advantage in the production and sale of beer to the detriment of actual and potential competition;

"(e) Industry-wide concentration in the sale of beer will be increased."

competition or tend to create a monopoly in any line of commerce "*in any section of the country.*" (Emphasis supplied.) The language of this section requires merely that the Government prove the merger has a substantial anti-competitive effect somewhere in the United States—"in *any* section" of the United States. This phrase does not call for the delineation of a "section of the country" by metes and bounds as a surveyor would lay off a plot of ground.[3] The Government may introduce evidence which shows that as a result of a merger competition may be substantially lessened throughout the country, or on the other hand it may prove that competition may be substantially lessened only in one or more sections of the country. In either event a violation of § 7 would be proved. Certainly the failure of the Government to prove by an army of expert witnesses what constitutes a relevant "economic" or "geographic" market is not an adequate ground on which to dismiss a § 7 case. Compare *United States* v. *Continental Can Co.*, 378 U. S. 441, 458. Congress did not seem to be troubled about the exact spot competition might be lessened; it simply intended to outlaw mergers which threatened competition in any or all parts of the country. Proof of the section of the country where the anti-competitive effect exists is entirely subsidiary to the crucial question in this and every § 7 case which is whether a merger may substantially lessen competition anywhere in the United States.

II.

The Government's evidence, consisting of documents, statistics, official records, depositions, and affidavits by witnesses, related principally to the competitive position of Pabst and Blatz in the beer industry throughout the

[3] *Times-Picayune* v. *United States*, 345 U. S. 594, 611; *United States* v. *du Pont Co.*, 351 U. S. 377, 395; *United States* v. *Philadelphia Nat. Bank*, 374 U. S. 321, 360, n. 37.

Nation, in the three-state area of Wisconsin, Illinois, and Michigan, and in the State of Wisconsin. The record in this case, including admissions by Pabst in its formal answer to the Government's complaint, the evidence introduced by the Government, the findings of fact and opinion of the District Judge, shows among others the following facts. In 1958, the year of the merger, Pabst was the tenth largest brewer in the Nation and Blatz ranked eighteenth. The merger made Pabst the Nation's fifth largest brewer with 4.49% of the industry's total sales. By 1961, three years after the merger, Pabst had increased its share of the beer market to 5.83% and had become the third largest brewer in the country. In the State of Wisconsin, before the merger, Blatz was the leading seller of beer and Pabst ranked fourth. The merger made Pabst the largest seller in the State with 23.95% of all the sales made there. By 1961 Pabst's share of the market had increased to 27.41%. This merger took place in an industry marked by a steady trend toward economic concentration. According to the District Court the number of breweries operating in the United States declined from 714 in 1934 to 229 in 1961, and the total number of different competitors selling beer has fallen from 206 in 1957 to 162 in 1961. In Wisconsin the number of companies selling beer has declined from 77 in 1955 to 54 in 1961. At the same time the number of competitors in the industry were becoming fewer and fewer, the leading brewers were increasing their shares of sales. Between 1957 and 1961 the Nation's 10 leading brewers increased their combined shares of sales from 45.06% to 52.60%. In Wisconsin the four leading sellers accounted for 47.74% of the State's sales in 1957 and by 1961 this share had increased to 58.62%. In the three-state area the evidence showed that in 1957 Blatz was the sixth largest seller with 5.84% of the total sales there and Pabst ranked seventh with 5.48%. As was true

in the beer industry throughout the Nation, there was a trend toward concentration in the three-state area. From 1957 to 1961 the number of major brewers selling there dropped from 104 to 86 and during the same period the eight leading sellers increased their combined shares of beer sales from 58.93% to 67.65%.

These facts show a very marked thirty year decline in the number of brewers and a sharp rise in recent years in the percentage share of the market controlled by the leading brewers. If not stopped, this decline in the number of separate competitors and this rise in the share of the market controlled by the larger beer manufacturers is bound to lead to greater and greater concentration of the beer industry into fewer and fewer hands. The merger of Pabst and Blatz brought together two very large brewers competing against each other in 40 States. In 1957 these two companies had combined sales which accounted for 23.95% of the beer sales in Wisconsin, 11.32% of the sales in the three-state area of Wisconsin, Illinois, and Michigan, and 4.49% of the sales throughout the country. In accord with our prior cases,[4] we hold that the evidence as to the probable effect of the merger on competition in Wisconsin, in the three-state area, and in the entire country was amply sufficient to show a violation of § 7 in each and all of these three areas.

We have not overlooked Pabst's contention that we should not consider the steady trend toward concentration in the beer industry because the Government has not shown that the trend is due to mergers. There is no duty on the Government to make such proof. It would

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[4] See, *e. g.*, *United States* v. *Von's Grocery Co.*, *ante*, p. —; *Brown Shoe Co.* v. *United States*, 370 U. S. 294; *United States* v. *Philadelphia Nat. Bank*, 374 U. S. 321; *United States* v. *El Paso Gas Co.*, 376 U. S. 651; *United States* v. *Alcoa*, 377 U. S. 271; *United States* v. *Continental Can Co.*, 378 U. S. 441; *FTC* v. *Consolidated Foods*, 380 U. S. 592.

seem fantastic to assume that part of the concentration in the beer industry has not been due to mergers but even if the Government made no such proof, it would not aid Pabst. Congress, in passing § 7 and in amending it with the Celler-Kefauver Anti-Merger Amendment, was concerned with arresting concentration in the American economy, whatever its cause, in its incipiency. To put a halt to what it considered to be a "rising tide" of concentration in American business, Congress, with full power to do so, decided "to clamp down on mergers with vigor." *United States* v. *Von's Grocery Co., ante,* p. —. It passed and amended § 7 on the premise that mergers do tend to accelerate concentration in an industry. Many believe that this assumption of Congress is wrong, and that the disappearance of small businesses with a correlative concentration of business in the hands of a few is bound to occur whether mergers are prohibited or not. But it is not for the courts to review the policy decision of Congress that mergers which may substantially lessen competition are forbidden, which in effect the courts would be doing should they now require proof of the congressional premise that mergers are a major cause of concentration. We hold that a trend toward concentration in an industry, whatever its causes, is a highly relevant factor in deciding how substantial the anti-competitive effect of a merger may be.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 404.—October Term, 1965.

United States, Appellant, v. Pabst Brewing Company et al.	On Appeal From the United States District Court for the Eastern District of Wisconsin.

[June 13, 1966.]

Mr. Justice Douglas, concurring.

While I join the Court's opinion, I add only a word in support of the Court's description of the anatomy of the "relevant geographic market" for purposes of the Clayton Act. The alternative leads to a form of concentration whose ultimate *reductio ad absurdum* is described in the Appendix to this opinion.

APPENDIX TO CONCURRING OPINION OF MR. JUSTICE DOUGLAS.

Every time you pick up the newspaper you read about one company merging with another company. Of course, we have laws to protect competition in the United States, but one can't help thinking that, if the trend continues, the whole country will soon be merged into one large company.

It is 1978 and by this time every company west of the Mississippi will have merged into one giant corporation known as Samson Securities. Every company east of the Mississippi will have merged under an umbrella corporation known as the Delilah Company.

It is inevitable that one day the chairman of the board of Samson and the president of Delilah would meet and discuss merging their two companies.

"If we could get together," the president of Delilah said, "we would be able to finance your projects and you would be able to finance ours."

"Exactly what I was thinking," the chairman of Samson said.

"That's a great idea and it certainly makes everyone's life less complicated."

The men shook on it and then they sought out approval from the Anti-Trust Division of the Justice Department.

At first the head of the Anti-Trust Division indicated that he might have reservations about allowing the only two companies left in the United States to merge.

"Our department," he said, "will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice."

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but

would help it. "The public will be the true beneficiary of this merger," he said. "The larger we are, the more services we can perform, and the lower prices we can charge."

The president of Delilah backed him up. "In the Communist system the people don't have a choice. They must buy from the state. In our capitalistic society the people can buy from either the Samson Company or the Delilah Company."

"But if you merge," someone pointed out, "there will be only *one* company left in the United States."

"Exactly," said the president of Delilah. "Thank God for the free enterprise system."

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. "While we find some drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages.

"Therefore, we're making an exception in this case and allowing Samson and Delilah to merge.

"I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws."

ART BUCHWALD, *Washington Post*, June 2, 1966.

SUPREME COURT OF THE UNITED STATES

No. 404.—October Term, 1965.

United States, Appellant, v. Pabst Brewing Company et al.	On Appeal From the United States District Court for the Eastern District of Wisconsin.

[June 13, 1966.]

Mr. Justice White, concurring.

I join the Court's opinion insofar as it holds the merger of Pabst and Blatz may substantially lessen competition in the beer industry in the Nation as a whole.

SUPREME COURT OF THE UNITED STATES

No. 404.—October Term, 1965.

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[June 13, 1966.]

Mr. Justice Harlan, whom Mr. Justice Stewart joins, concurring in the result.

I concur in the judgment of reversal on the limited ground that the Government's evidence is sufficient to establish prima facie that Wisconsin and the tri-state area comprising Wisconsin, Michigan and Illinois are both proper sections of the country in which to measure the probable effects of the acquisition of Blatz by Pabst under § 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U. S. C. § 18 (1964 ed.). However, I am wholly unable to subscribe to the Court's opinion which appears to emasculate the statutory phrase "in any section of the country."

I.

The Court is quite right in stating that the primary question in a § 7 case is whether the effect of the challenged acquisition "may substantially lessen competition." *Ante*, p. 3. But any resolution of this question necessarily involves a study of statistics and other evidence bearing upon market shares, market trends, number of competitors and the like. Obviously such figures will vary depending upon what geographic area is chosen as relevant, and the possibilities for "gerrymandering" are limitless. The Senate Report which discusses the "section of the country" requirement, S. Rep. No. 1775, 81st Cong., 2d Sess., 5–6 (1950), notes

that it "will vary with the nature of the product" so as to determine an "economically significant" area in which to measure a change in the level of competition. *Id.*, at 5. "In determining the area of effective competition for a given product," the report continues, "it will be necessary to decide what comprises an appreciable segment of the market. An appreciable segment of the market may not only be a segment which covers an appreciable segment of the trade, but it may also be a segment which is largely segregated from, independent of, or not affected by the trade in that product in other parts of the country." *Id.*, at 6.

The cases under § 7 have established a flexible, but workable, approach to the question of geographic market. In *Brown Shoe Co.* v. *United States*, 370 U. S. 294, the Court recognized that a test for an appropriate geographic market had been prescribed by Congress, 370 U. S., at 336, and that it must " 'correspond to the commercial realities' . . . of the industry and be economically significant." 370 U. S., at 336–337.[1] The determination of relevant geographic market received more detailed study in *United States* v. *Philadelphia Nat. Bank*, 374 U. S. 321. The Court there saw the "proper question" as framed to ascertain "not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." 374 U. S., at 357.

The appropriate geographic area in which to examine the effects of an acquisition is an area in which the parties to the merger or acquisition compete, and around which there exist economic barriers that significantly impede the entry of new competitors. Of course, as

[1] See in addition my concurring opinion in *Brown*, 370 U. S., at 368–369.

Philadelphia National Bank and commentators[2] have noted, no such designation is perfect, for all geographic markets are to some extent interconnected, and over time any barrier may be overcome or may disappear owing to structural or technological changes in the industry, *e. g.*, refrigeration which widened markets for "perishable" foods. Thus, in *Philadelphia National Bank*, it was recognized that large borrowers and depositors operate in something like a national banking market, and that very small borrowers and depositors are likely to confine themselves to banks in their immediate neighborhood. Nevertheless, the Court was able to find a four-county area in metropolitan Philadelphia to be a relevant "section of the country" in which to measure that merger. Some of the criteria cited there as supporting such a determination was the convenience of location for all but the largest bank customers as an important factor limiting competition by outsiders, the concentration of the defendant's business in that region, and administrative designations of that region as an "area of effective competition." 374 U. S., at 359–361. See also *Tampa Elec. Co.* v. *Nashville Coal Co.*, 365 U. S. 320, 327, 330–333.

II.

In the case before us the Government has in my opinion made a prima facie showing that the State of Wisconsin and the three-state area[3] are both relevant

[2] See, *e. g.*, Bock, Mergers and Markets 35–42 (1960); Kaysen & Turner, Antitrust Policy 101–102 (1959); Martin, Mergers and the Clayton Act 321–322 (1959).

[3] The evidence in the record supporting the Government's contention that the three-state area is a relevant geographic market in which to measure the effects of this acquisition is not significantly different from that supporting the Wisconsin market. For simplicity, this opinion will therefore discuss these criteria only in terms of the Wisconsin market.

sections of the country for measuring the effects of this merger. That is, on the basis of the evidence thus far submitted, I believe the Government has made a sufficient showing that significant barriers exist to prevent outside brewers from entering the Wisconsin market as effective competitors to those brewers already marketing beer there.

As a preliminary matter, it is clear that Pabst and Blatz both carry on substantial business and are direct competitors in Wisconsin. About 13% of Pabst's sales in 1957, the year before the merger, were made in Wisconsin, where Pabst maintained one of its four breweries. Blatz maintained its only brewery in Wisconsin, where it sold 31% of its beer in 1957. It is thus clear that the two beers were important competitors in that area; indeed Blatz was the leading seller in Wisconsin and Pabst the fourth largest. These statistics become meaningful for antitrust purposes in the context of the further evidence showing substantial barriers to brewers who were not then selling beer in Wisconsin.

The sales statistics submitted by the Government show not only a high percentage of the Wisconsin market dominated by Pabst and Blatz, but also a pattern of local concentration in the sale of beer there and throughout the country. Wisconsin, with about the highest per capita beer consumption level in the country, was dominated by substantially the same group of brewers maintaining substantially the same market shares year after year without serious challenge from other brewers operating in other sectors of the country.[4] This picture of local concentration in various regional markets is supported by evidence that brewers are able to sell the same beer in different States for different prices (exclusive of trans-

[4] Only one-third of the Nation's beer producers sold beer in the Wisconsin market.

portation cost). Although there is no direct evidence in the record that beer is subject to high transportation costs, which would of course be highly persuasive evidence supporting the local-market theory, it is relevant that about 90% of beer sold in Wisconsin comes from breweries located in that State or nearby in Minnesota. Indeed, in 1959 the Blatz brewery in Wisconsin was closed down, and Blatz beer brewed in the four Pabst breweries, because "decentralization" was considered more efficient. To the extent that it is true that local breweries have an advantage in terms of efficiency and thus cost, a significant barrier exists to brewers who wish to sell in Wisconsin but brew their beer in other areas of the country. Thus, in terms of the structure of beer marketing as reflected in sales statistics and brewery location the record supports the relevancy of Wisconsin as a distinguishable and economically significant market for the sale of beer.

This picture of beer competition as essentially a localized or regional matter is buttressed by evidence of marketing techniques used by the industry. Beer is not a fungible commodity like wheat; product differentiation is important, and the ordinary consumer is likely to choose a particular brand rather than purchase any beer indiscriminately. The record demonstrates a recognition in the industry that a successful sales program relies to a large extent on consumer recognition and preference for particular brands, and that this preference must be built up through intensive advertising and other promotional techniques. There is evidence in the record regarding efforts by Pabst and Blatz to enter new or undeveloped markets in this way, and the inference is inescapable that were a brewer from, say, Colorado, interested in entering the Wisconsin market, a great deal of costly preliminary promotional activity would be required before sizable Wisconsin sales could be expected.

In addition, the record indicates that beer is sold through distribution networks operating on regional, statewide, and local levels. There are numerous examples in the record of the highly specialized salesmanship needed to induce local retail sellers to carry, display, and advertise new brands of beer.

This heavy emphasis on consumer recognition and promotional techniques in the marketing of beer supports the conclusion that there does exist a substantial barrier to a new competitor in a regional market such as Wisconsin. To enter this market the new entrant must be prepared to incur considerable expense over a substantial period of time creating a distribution network and advertising his brand in order to compete more or less on a parity with an established seller in the Wisconsin market.

A further factor, the pervasive state regulation of the sale and promotion of alcoholic beverages, well documented in the record, supports the acceptability of Wisconsin as a relevant geographic market for beer. Methods of sales promotion permitted in one State are unlawful in others. State regulations govern labeling, size of containers, alcoholic content of beer, shipping procedures, and credit arrangements with wholesalers. A brewer wishing to enter the Wisconsin market does not merely start transporting beer to Milwaukee; he must comply with these various state requirements, which may differ from those in the States in which he has always dealt. Although this factor may not by itself be an effective barrier to distant competitors, it does reinforce the other factors examined in justifying the conclusion that there is a state or regional market for beer.

All of this, taken in the context of a prima facie case, supports the proposition that Wisconsin is an identifiable "section of the country" presenting impediments to the entry of new competitors and insulating those already within the market. In terms of antitrust consequences,

this means that those already within such a local market can engage in oligopolistic pricing or other practices without a very real threat that brewers operating in other areas could easily, and within a reasonably short time, enter the Wisconsin market as effective competitors to those already entrenched there.

It should be emphasized that we are faced here only with a dismissal after the presentation of the Government's case. On remand, the respondents can of course attempt to refute this showing by introducing evidence demonstrating either that these asserted barriers do not in practice exist, or that when seen in light of other factors they are so unimportant that brewers who presently do not sell in the Wisconsin market are not in fact appreciably hindered from entering as effective competitors.

III.

The trial court also found that viewing the entire continental United States as the relevant market, the evidence submitted did not sustain the Government's contention that the acquisition may substantially lessen competition. I would not disturb that conclusion. I do not of course pass upon the sufficiency of the evidence to establish a prima facie violation of § 7 within Wisconsin or the three-state area, an issue which the District Court had no occasion to reach in view of its determination that neither of these sections was a relevant market.

For these reasons I believe the District Court erred in dismissing the complaint at the close of the Government's case.

SUPREME COURT OF THE UNITED STATES

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[June 13, 1966.]

Mr. Justice Fortas, concurring in the result.

The District Court clearly erred in dismissing the complaint. There is ample proof that the effect of this acquisition may be substantially to lessen competition in the production and sale of beer in well-defined sections of the country. But I cannot join the Court's opinion because, contrary to the statements in that opinion, I believe that, in § 7 cases, it is the Government's duty, as plaintiff, to prove the "market" or the "section of the country" in which the claimed effect of the acquisition is manifest. This is an important, even essential element of the judgment which must be made in a § 7 case. This Court has consistently recognized this. See, *e. g., Brown Shoe Co.* v. *United States*, 370 U. S. 294; *U. S.* v. *Philadelphia National Bank*, 374 U. S. 321, 355–362. It is true that the search for the relevant market is frequently complicated and elaborated beyond reason or need—sometimes for purposes of delay or obstruction. But the search is nevertheless essential. It is not a snipe hunt.

In some situations, arithmetic as to the merging companies' aggregate volume of sales of the commodity involved may be impressive. Sometimes, the resulting size of the conjoined companies is great. But unless it can be shown that the effect may be "substantially to lessen competition or tend to create a monopoly" in a specific section of the country, courts are not authorized to con-

demn the acquisition. Congress has been specific in at least this respect, and I cannot agree that this standard should be denigrated. Unless both the product and the geographical market are carefully defined, neither analysis nor result in antitrust is likely to be of acceptable quality. Compare majority and dissenting opinions in *United States* v. *Grinnell Corporation*, — U. S. — (involving §§ 1 and 2 of the Sherman Act).